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CALIFORNIA PHYSICIANS' SERVICE dba  
BLUE SHIELD OF CALIFORNIA

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DAVID LIEBERMAN, individually  
and on behalf of all others similarly  
situated,

Plaintiffs,

vs.

REGENTS OF THE UNIVERSITY OF  
CALIFORNIA; BLUE SHIELD OF  
CALIFORNIA; and DOES 1 to 50,

Defendants.

Case No. 3:18-cv-3282

**DEFENDANT BLUE SHIELD OF  
CALIFORNIA'S NOTICE OF  
REMOVAL OF CIVIL ACTION  
TO FEDERAL COURT**

Filed concurrently with:

- 1) Civil Case Cover Sheet
- 2) Certificate of Service to Adverse  
Party of Notice of Removal  
(LR 5-5)
- 3) Corporate Disclosure Statement  
(FRCP 7.1) and Certification of  
Interested Entities or Persons  
(LR 3-15)

1 TO THE CLERK OF THE UNITED STATES DISTRICT COURT:

2 PLEASE TAKE NOTICE that Defendant California Physicians' Service dba  
3 Blue Shield of California ("Blue Shield"), by and through its counsel, gives notice  
4 that it removes this putative class action to the United States District Court for the  
5 Northern District of California and states the following grounds for removal:

6 **I. GROUNDS FOR REMOVAL**

7 1. This is a civil action over which this Court has original jurisdiction  
8 under 28 U.S.C. § 1331 and which may be removed by Blue Shield under 28  
9 U.S.C. § 1441(b), because it arises under the Fifth and Fourteenth Amendments of  
10 the United States Constitution.

11 **II. SERVICE OF COMPLAINT AND FIRST AMENDED COMPLAINT**

12 2. On March 13, 2018, Plaintiff filed a putative class action titled  
13 *Lieberman v. Regents of the Univ. of California et. al.*, bearing case number CGC-  
14 18-564930 in the Superior Court of the State of California for the County of San  
15 Francisco (the "State Court Action"). The putative class action was filed against  
16 two defendants, Blue Shield and the Regents of the University of California ("UC  
17 Regents") (collectively, "Defendants").

18 3. Plaintiff served Defendants with a copy of the original Complaint and  
19 Summons on March 21, 2018. Attached as Exhibit A is a true and correct copy of  
20 the Complaint and Summons. Attached as Exhibit B is a true and correct copy of  
21 the Proofs of Service of Summons.

22 4. The original Complaint did not include any allegations pertaining to  
23 the United States Constitution.

24 5. The parties met and conferred regarding Defendants' pleading  
25 challenges to the original Complaint. Plaintiff agreed to extend Defendants'  
26 deadline to respond to the Complaint to May 18, 2018. Plaintiff then indicated he  
27 intended to file an amended complaint.

6. Because Plaintiff had not designated the case complex upon filing the Complaint, Blue Shield filed a Civil Cover Sheet counter-designating the case complex on May 1, 2018. UC Regents also filed the same. Blue Shield filed an Application for Approval of Complex Litigation Designation on May 15, 2018 and, on May 30, 2018, the Court issued an Order Granting Complex Designation. Attached as Exhibit C is a true and correct copy of these filings and the order.

7. Plaintiff amended the Complaint. On May 4, 2018, Plaintiff served Defendants with a copy of the First Amended Complaint. Attached as Exhibit D is a true and correct copy of the First Amended Complaint.

8. In the First Amended Complaint, Plaintiff added allegations in which he asserted that Defendants violated the due process and equal protection clauses of the United States Constitution. As set forth below, Plaintiff's claims in the amended complaint now hinge on these alleged constitutional violations.

9. Blue Shield's notice of removal is timely. 28 U.S.C. § 1446(b). Not more than thirty (30) days have passed since service of the First Amended Complaint on Blue Shield.

10. All Defendants consent to removal.

### III. FACTS ESTABLISHING FEDERAL QUESTION JURISDICTION

11. Removal is proper because "[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States" (28 U.S.C. § 1331), and the causes of action in Plaintiff's First Amended Complaint arise under the Fifth and Fourteenth Amendments of the United States Constitution.

#### A. In the First Amended Complaint, Plaintiff seeks relief for Defendants' alleged constitutional violations.

12. Plaintiff David Lieberman is a professor at UC Berkeley Law School. (FAC ¶ 1.) He alleges that, as an employee, he was entitled to health care coverage as a group employee benefit. (*Id.*) That health coverage was "a self-funded plan

1 paid through monthly contributions by employees and the Regents.” (*Id.*) Plaintiff  
 2 was enrolled in that UC Regents health plan in 2016, and Blue Shield was the  
 3 claims administrator for the plan. (*Id.* ¶ 13.)

4 13. On May 2, 2016, Plaintiff sustained serious injuries in connection with  
 5 a motor vehicle accident. (FAC ¶ 2.) Plaintiff’s UC Regents plan paid his medical  
 6 expenses, which were “in excess of \$500,000.” (*Id.*) Plaintiff alleges the individual  
 7 who caused his accident had \$15,000 of liability coverage, but Plaintiff had  
 8 \$500,000 of uninsured and underinsured coverage (“UM/UIM coverage”). (*Id.* ¶ 3.)

9 14. Plaintiff then alleges that his UC Regents health plan states that the  
 10 plan has the right to recover medical expenses that the plan paid for employees  
 11 from any third party recovery obtained by the injured employee related to those  
 12 medical expenses.<sup>1</sup> (FAC ¶ 4.) As set forth below, Plaintiff alleges that this  
 13 reimbursement provision in the UC Regents health plan is unlawful.

14 15. Plaintiff alleges that Blue Shield, the claims administrator under the  
 15 plan, contracts with a collection agency, Rawlings and Company, to pursue  
 16 reimbursement from employees for UM/UIM recoveries. (FAC ¶ 17.) Plaintiff  
 17 further alleges that “Rawlings has sent multiple demands for reimbursement” to  
 18 him and that his “personal injury attorney advised Rawlings in writing that any  
 19 such claim was unlawful.” (*Id.* ¶ 18.) Rawlings “responded with a letter dated  
 20 October 16, 2017, rejecting plaintiff’s position and insisting on a right to plaintiff’s  
 21 UM/UIM coverage” and “[s]ince that date, Rawlings has continued to pursue

22 <sup>1</sup> Specifically, the UC Regents health plan states that “[i]f a Member’s injury or illness was, in  
 23 any way, caused by a third party who may be legally liable or responsible for the injury or illness,  
 24 no benefits will be payable or paid under the Plan unless the Member agrees in writing, in a form  
 25 satisfactory to the Plan” to “reimburse the Plan for Benefits paid by the Plan from any Recovery  
 26 (defined below) when the Recovery is obtained from or on behalf of the third party or the insurer  
 27 of the third party, or from the Member’s own uninsured or underinsured motorist coverage.”  
 28 (FAC ¶ 4 [referencing Exhibit 1 as “attached hereto” and page 42 thereof]; Compl., Ex. 1.) The  
 plan defines “Recovery” to include “any amount awarded to or received by way of . . . any third  
 party or third party insurer, or from your uninsured or underinsured motorist coverage, related to  
 the illness or injury.” (*Id.*) The plan then states: “The Member shall pay to the Plan from the  
 Recovery an amount equal to the Benefits actually paid by the Plan in connection with the illness  
 or injury.” (*Id.*)

1 reimbursement from plaintiff Lieberman's UM/UM policy." (*Id.*) Plaintiff does not  
 2 allege that Rawlings collected any amounts from his UM/UM policy. (*See id.*)

3 16. Plaintiff alleges that UC Regents has 185,000 employees and he  
 4 asserts putative class claims on behalf of two subclasses of employees. (FAC ¶¶ 19-  
 5 20.) Subclass A is "[a]ll present and previous employees of REGENTS who are  
 6 currently facing DEFENDANTS' claims for reimbursement from their own  
 7 UM/IUM claims but have not paid defendants from said coverage, and REGENTS  
 8 employees who face such claims in the future." (*Id.* ¶ 20.) Subclass B is "[a]ll  
 9 REGENTS employees who have paid reimbursement claims to DEFENDANTS or  
 10 their agents from their UM/UM coverage since March 1, 2014." (*Id.*)

11 17. The basis of Plaintiff's complaint is that the reimbursement provision  
 12 in the UC Regents health plan and the actions by Rawlings, Blue Shield's alleged  
 13 agent, requesting reimbursement under the plan are unlawful for three reasons:

14 18. First, Plaintiff alleges that the plan and Rawlings' actions violate  
 15 California Insurance Code § 11580.2(c)(4), which states in relevant part "[t]he  
 16 insurance coverage provided for in this section [UM/UM] does not apply either as  
 17 primary or as excess coverage . . . [i]n any instance where it would inure . . . directly  
 18 to the benefit of the United States, or any state or any political subdivision thereof."  
 19 (FAC ¶ 5.) Plaintiff contends that UC Regents is a "political subdivision." (*See id.*)

20 19. Second, Plaintiff alleges that the plan and Rawlings' actions violate the  
 21 due process clauses of the Fifth and Fourteenth Amendments of the United States  
 22 Constitution. (FAC ¶ 9.) Plaintiff asserts that "DEFENDANTS' seizure of  
 23 plaintiff's right to his individual UM coverage benefits through the unilateral  
 24 assertion of a lien claim in its plan document constitutes a seizure of private  
 25 property by the State without any due process of law. There is no provision in  
 26 DEFENDANTS' plan for any hearing or other judicial oversight before such  
 27 seizure is effected through assertion of the lien claim." (*Id.*)

20. Third, Plaintiff alleges that that the plan and Rawlings' actions violate the equal protection clause of the Fourteenth Amendment of the United States Constitution. (FAC ¶ 9.) Plaintiff asserts that "DEFENDANTS' reimbursement provision (Exhibit 1) also purports to provide that there is a 'waiver of any defense to full reimbursement of the Plan from the recovery.' Said seizure also constitutes a violation of equal protection of the laws of the State in that similarly situated persons are treated substantially differently depending on which State laws apply, as noted above." (*Id.*)

**B. All of Plaintiff's causes of action hinge on a finding that Defendants violated the United States Constitution.**

21. Plaintiff asserts four causes of action in the First Amended Complaint: (1) declaratory relief, (2) preliminary and permanent injunctive relief, (3) unjust enrichment/restitution, and (4) violation of California's Unfair Competition Law ("UCL"), Business & Professions Code § 17200.

22. In Count 1, Plaintiff seeks a declaration that the reimbursement provision in the UC Regents health plan and Rawlings' requests for reimbursement violate California Insurance Code § 11580.2(c)(4), the due process clauses of the United States Constitution, and the equal protection clause of the United States Constitution. (FAC ¶¶ 30-33; Prayer for Relief ¶¶ 1-2)

23. In Count 2, Plaintiff seeks preliminary and permanent injunctive relief based on the same three legal theories. (FAC ¶¶ 34-38.)

24. In Count 3, Plaintiff asserts that the Defendants were unjustly enriched and seeks restitution based on the same three legal theories. (FAC ¶¶ 39-43.)

25. In Count 4, which is asserted only against Blue Shield, Plaintiff asserts that Rawlings' actions violate the "unlawful" prong of the UCL based on the same three legal theories. (FAC ¶¶ 44-53.)

26. In his class allegations, Plaintiff asserts that a legal question common to the class is "[w]hether the Defendants' plan provision allowing a lien seizure of



employees' UIM coverage without the benefit of any hearing or judicial oversight is a violation of due process and equal protection of the law." (FAC ¶ 27.)

**C. Removal is appropriate even though these federal questions are embedded within state law claims.**

27. Removal is appropriate, even though the federal questions are embedded within state law claims. The Ninth Circuit has consistently upheld removal where, as here, a plaintiff's state law claims are predicated upon alleged violations of federal law. *California ex rel. Lockyer v. Dynegy, Inc.*, 375 F.3d 831 (9th Cir.), *as amended on denial of reh'g*, 387 F.3d 966 (9th Cir. 2004) (affirming removal of UCL action where "unlawful" claim grounded upon violation of a federal regulation); *Sparta Surgical Corp. v. National Assoc. of Sec. Dealers, Inc.*, 159 F.3d 1209, 1212-13 (9th Cir. 1998) (affirming removal where state law claims predicated on regulations issued pursuant to federal law); *Brennan v. Southwest Airlines Co.*, 134 F.3d 1405, 1409 (9th Cir. 1998) (affirming removal of UCL claim because it was inherently federal as it sought refund of tax governed by federal law); *see also National Credit Reporting Ass'n, Inc. v. Experian Info. Sols., Inc.*, No. C04-01661 WHA, 2004 WL 1888769, at \*3 (N.D. Cal. July 21, 2004) ("Even if Section 17200 provides for a separate remedy for a violation of the borrowed federal law, the 'unlawful' prong of Section 17200 necessarily requires a determination that the borrowed federal law was violated. When the borrowed law is a federal law, then the claim for unlawful business practices rests on resolution of the federal law. Such an unlawful claim may be removed because the federal law is essential to the plaintiff's claim.") (citations omitted).

28. Here, as in the cases cited above, Plaintiff's state law claims hinge on a finding by the Court that Defendants violated federal law. Accordingly, the case is removable under 28 U.S.C. § 1441(b).

**D. The Court should exercise supplemental jurisdiction over Plaintiff's state law theory.**

29. The Court may exercise supplemental jurisdiction over "all other claims that are so related to claims in the action . . . that they form part of the same case or controversy . . . ." 28 U.S.C. § 1367(a).

30. As set forth above, Plaintiff's claims are based on three legal theories—that the reimbursement provision and Rawlings' requests for reimbursement are unlawful under the Insurance Code § 11580.2(c)(4), the due process clauses of the United States Constitution, and the equal protection clause of the United States Constitution.

30. The Court should exercise supplemental jurisdiction over Plaintiff's state law theory under California Insurance Code § 11580.2(c)(4), because it is part of the same case or controversy. The theory turns on the same set of facts as Plaintiff's federal constitutional theories. Further, Plaintiff seeks the same relief. Under all three legal theories, Plaintiff asks this Court to find that the reimbursement provision in the UC Regents health plan is unlawful and cannot be enforced with respect to his UM/UIM recovery.

**IV. INTRADISTRICT ASSIGNMENT**

31. Assignment to the San Francisco Division of the United States Court for the Northern District of California is proper under 28 U.S.C. § 1441(a) and Civil Local Rule 3-5(b) because the State Court Action was filed and is pending in the County of San Francisco.

**V. SERVICE OF NOTICE OF REMOVAL**

32. Written notice of this removal will be filed with the Clerk for the Superior Court of California in the County of San Francisco and served on Plaintiff's counsel.



**VI. CONCLUSION**

33. Blue Shield requests that the Court exercise removal and supplemental removal jurisdiction over this action and proceed as though it originally was filed in this Court and that the Court grant Blue Shield any other relief to which is Blue Shield entitled.

Dated: June 1, 2018

MANATT, PHELPS & PHILLIPS, LLP

By: /s/ Joseph E. Laska

Joseph E. Laska

Attorneys for Defendant

CALIFORNIA PHYSICIANS' SERVICE dba  
BLUE SHIELD OF CALIFORNIA

## **EXHIBIT A**



**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO**

**Document Scanning Lead Sheet**

Mar-12-2018 11:42 am

Case Number: CGC-18-564930

Filing Date: Mar-12-2018 11:32

Filed by: NEYL WEBB

Image: 06249849

COMPLAINT

DAVID LIBERMAN VS. REGENTS OF THE UNIVERSITY OF CALIFORNIA ET AL

001C06249849

**Instructions:**

Please place this sheet on top of the document to be scanned.

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>MICHAEL D. PADILLA, SBN 67060</b> O'MARA & PADILLA 320 Encinitas Blvd., Suite A Encinitas, CA 92024 TELEPHONE NO.: 858-481-5454 FAX NO.: 858-720-9797 ATTORNEY FOR (Name): <b>DAVID LIEBERMAN</b>		<b>FOR COURT USE ONLY</b>  <div style="font-size: 2em; font-weight: bold; margin: 10px 0;">FILED</div> San Francisco County Superior Court  <div style="font-size: 1.2em; font-weight: bold; margin: 10px 0;">MAR 12 2018</div> CLERK OF THE COURT BY: Deputy Clerk	
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO</b> STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, CA 94102 BRANCH NAME: <b>CIVIL CENTER COURTHOUSE</b>		CASE NAME: <b>DAVID LIEBERMAN et al., v. REGENTS OF THE UNIVERSITY OF CALIFORNIA, BLUE SHIELD OF CALIFORNIA and DOES 1-50</b>	
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)		<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	
		CASE NUMBER: <b>CGC-18-564930</b> JUDGE: DEPT:	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:
- |  |   |  |
|--|---|--|
| <b>Auto Tort</b><br><input type="checkbox"/> Auto (22)<br><input type="checkbox"/> Uninsured motorist (46)<br><b>Other PI/PD/W/D (Personal Injury/Property Damage/Wrongful Death) Tort</b><br><input type="checkbox"/> Asbestos (04)<br><input type="checkbox"/> Product liability (24)<br><input type="checkbox"/> Medical malpractice (45)<br><input type="checkbox"/> Other PI/PD/W/D (23)<br><b>Non-PI/PD/W/D (Other) Tort</b><br><input type="checkbox"/> Business tort/unfair business practice (07)<br><input type="checkbox"/> Civil rights (08)<br><input type="checkbox"/> Defamation (13)<br><input type="checkbox"/> Fraud (16)<br><input type="checkbox"/> Intellectual property (19)<br><input type="checkbox"/> Professional negligence (25)<br><input type="checkbox"/> Other non-PI/PD/W/D tort (35)<br><b>Employment</b><br><input type="checkbox"/> Wrongful termination (36)<br><input type="checkbox"/> Other employment (15) | <b>Contract</b><br><input type="checkbox"/> Breach of contract/warranty (06)<br><input type="checkbox"/> Rule 3.740 collections (09)<br><input type="checkbox"/> Other collections (09)<br><input type="checkbox"/> Insurance coverage (18)<br><input checked="" type="checkbox"/> Other contract (37)<br><b>Real Property</b><br><input type="checkbox"/> Eminent domain/inverse condemnation (14)<br><input type="checkbox"/> Wrongful eviction (33)<br><input type="checkbox"/> Other real property (26)<br><b>Unlawful Detainer</b><br><input type="checkbox"/> Commercial (31)<br><input type="checkbox"/> Residential (32)<br><input type="checkbox"/> Drugs (38)<br><b>Judicial Review</b><br><input type="checkbox"/> Asset forfeiture (05)<br><input type="checkbox"/> Petition re: arbitration award (11)<br><input type="checkbox"/> Writ of mandate (02)<br><input type="checkbox"/> Other judicial review (39) | <b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</b><br><input type="checkbox"/> Antitrust/Trade regulation (03)<br><input type="checkbox"/> Construction defect (10)<br><input type="checkbox"/> Mass tort (40)<br><input type="checkbox"/> Securities litigation (28)<br><input type="checkbox"/> Environmental/Toxic tort (30)<br><input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)<br><b>Enforcement of Judgment</b><br><input type="checkbox"/> Enforcement of judgment (20)<br><b>Miscellaneous Civil Complaint</b><br><input type="checkbox"/> RICO (27)<br><input type="checkbox"/> Other complaint (not specified above) (42)<br><b>Miscellaneous Civil Petition</b><br><input type="checkbox"/> Partnership and corporate governance (21)<br><input type="checkbox"/> Other petition (not specified above) (43) |
|--|---|--|
2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |  |  |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties<br>b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve<br>c. <input type="checkbox"/> Substantial amount of documentary evidence | d. <input type="checkbox"/> Large number of witnesses<br>e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court<br>f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|--|--|
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ ~~non-monetary~~ declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify):
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: March 12, 2018

MICHAEL D. PADILLA

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

ORIGINAL

ORIGINAL

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**FILED**  
San Francisco County Superior Court

MAR 12 2018

CLERK OF THE COURT

BY:  Deputy Clerk

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF SAN FRANCISCO – CIVIL CENTER COURTHOUSE**

DAVID LIEBERMAN, INDIVIDUALLY AND  
ON BEHALF OF ALL OTHERS SIMILARLY  
SITUATED,

Plaintiffs,

vs.

REGENTS OF THE UNIVERSITY OF  
CALIFORNIA; BLUE SHIELD OF  
CALIFORNIA, AND DOES 1 TO 50,  
INCLUSIVE

Defendants.

Case No.

**CGC-18-564930**

Action Filed:

Judge:

Dept:

**CLASS ACTION COMPLAINT**

VERIFIED COMPLAINT FOR:

**1. Declaratory Relief**

**2. Preliminary and Permanent  
Injunctive Relief**

**3. Unjust Enrichment/Restitution**

**4. Violation of Business and  
Professions Code §17200, et seq.  
(Unlawful and Unfair)**

1 Plaintiff DAVID LIEBERMAN by and through his undersigned counsel, alleges,  
2 based on personal knowledge as to himself and his own acts and, as to other matters,  
3 based on information and belief, as follows:  
4

#### 5 INTRODUCTION

6 1. At all times mentioned, plaintiff David Lieberman has been employed by the  
7 defendant Regents of the University of California (hereinafter "REGENTS") as a  
8 professor at UC Berkeley Law School. Employees of the REGENTS are entitled to  
9 health care coverage as a group benefit of their employment. This coverage is a self-  
10 funded plan paid through monthly contributions by employees and the Regents and  
11 plaintiff was enrolled in this health plan in 2016. Since defendant REGENTS is a  
12 political subdivision of the State of California, it is a public entity and therefore the  
13 REGENTS group health plan is not subject to ERISA.  
14

15 2. On May 2, 2016, plaintiff was involved in a serious motor vehicle accident  
16 and suffered severe injuries, requiring hospitalization and extensive treatment. At the  
17 time of the accident, plaintiff was covered under the REGENTS health plan, and said  
18 health plan paid for plaintiff's medical expenses in excess of \$500,000.  
19

20 3. At the time of the above accident, the tortfeasor who caused the accident  
21 injuring plaintiff had only \$15,000 of liability coverage. However, plaintiff had \$500,000  
22 of uninsured and underinsured ("UM/UIM") coverage which provides for an additional  
23 \$485,000 of coverage to plaintiff.  
24

25 4. The REGENTS group health plan at the time of plaintiff's accident provided  
26 for reimbursement rights purporting to allow REGENTS to recover medical expenses its  
27 health plan had paid from any "Recovery" made by an injured employee. "Recovery" is  
28



1 defined in the plan to include any amount received from the employee's UM/UIM  
2 coverage. The REGENTS health plan's reimbursement provision appears at pages 42-  
3 43 of the plan's Benefit Booklet, which pages are attached hereto as Exhibit 1.

4  
5 5. In 1972, the California State Legislature modified the UM/UIM statute,  
6 Insurance Code §11580.2 and included a new subsection under §11580.2(c)(4),  
7 providing that, "The insurance coverage provided for in this section does not apply  
8 either as primary or as excess coverage" (4) "In any instance where it would inure  
9 directly or indirectly to the benefit of any workers' compensation carrier or to any or to  
10 any person qualified as a self-insurer under any workers' compensation law, **or directly**  
11 **to the benefit of the United States, or any state or any political subdivision**  
12 **thereof.**" (emphasis supplied)  
13

14 6. DEFENDANTS have willfully violated this law by demanding reimbursement  
15 rights from Plaintiffs' UM/UIM coverage, despite the fact that the defendant REGENTS  
16 is a state public entity and political subdivision of the State of California and therefore  
17 prohibited by the above Insurance Code section from directly benefiting from any  
18 person's UM/UIM coverage.  
19

20 7. This is a Class Action pursuant to Code of Civil Procedure 382 by Plaintiff on  
21 behalf of himself and other individuals employed by defendant REGENTS who were  
22 subjected to claims by the DEFENDANTS for reimbursement of proceeds under  
23 employees' UM/UIM coverage.  
24

25 8. Plaintiff seeks, on behalf of himself and the Class, a declaration that  
26 defendants' practice of claiming UM/UIM benefits from its employees is unlawful, and  
27 seeks a permanent injunction enjoining DEFENDANTS from continuing their unlawful  
28

1 practice of willfully violating the Insurance Code provisions intended to safeguard  
2 Plaintiffs' UM/UIM coverage, restitution, and costs and attorneys' fees.

3  
4 **PARTIES**

5 9. Plaintiff DAVID LIEBERMAN is a citizen of California and resides in  
6 Berkeley, California. He is employed by Defendant REGENTS as a professor at UC  
7 Berkeley Law School.

8 10. At all times relevant herein, Defendant REGENTS was a public entity and  
9 political subdivision of the State of California that operates in San Francisco and  
10 throughout the State of California.

11 11. Defendant BLUE SHIELD of CALIFORNIA ("BLUE SHIELD") is a  
12 corporation duly organized and existing under the laws of the State of California, with its  
13 principal place of business located in San Francisco, California. It is licensed to conduct  
14 business as a healthcare service plan, health/disability insurer and is in the business of  
15 providing health plans to consumers throughout this State. BLUE SHIELD contracts  
16 with Regents to provide claims administration and provider network services to  
17 defendant REGENTS' health plan for its employees. Plaintiff is informed and believes  
18 and thereon alleges that, pursuant to that contract, BLUE SHIELD administers claims,  
19 provides network, subrogation and reimbursement services and exercises discretion in  
20 performing all such duties.

21 12. The true names and capacities, whether individual, corporate, associate or  
22 otherwise, of DEFENDANTS sued herein as DOES 1 through 50 are currently unknown  
23 to Plaintiffs who, therefore, sue these defendants by such fictitious names under Code  
24 or Civil Procedure §474. Plaintiffs allege, upon information and belief, that each of the  
25  
26  
27  
28

1 DOE defendants is legally responsible in some manner for the unlawful acts referred to  
2 herein. Plaintiff will seek leave of court to amend this complaint to reflect the true  
3 names and capacities of the DEFENDANT designated hereinafter as DOES when such  
4 identities become known  
5

6 13. Plaintiff is informed and believes and, based thereon, alleges each  
7 Defendant acted in all respects pertinent to this action as the agent of the other  
8 DEFENDANTS, carried out a joint scheme, business plan or policy in all respects  
9 pertinent hereto, and the acts of each DEFENDANT are legally attributable to the other  
10 DEFENDANTS.  
11

#### 12 **FACTUAL BACKGROUND**

13 14. Plaintiff is informed and believes and thereon alleges that as of the date of  
14 this complaint, DEFENDANTS have made reimbursement demands from Plaintiffs'  
15 UM/UIM coverage throughout the State of California.  
16

17 15. Defendant BLUE SHIELD contracts with a Kentucky collection agency,  
18 Rawlings and Company, to pursue subrogation and reimbursement from employees of  
19 defendant REGENTS from said employees' personal injury claims, including claims  
20 from employees' own UM/UIM recoveries.  
21

22 16. Acting as agent for the DEFENDANT and each of them, Rawlings has sent  
23 multiple demands for reimbursement from any recovery that plaintiff Lieberman should  
24 make from his own UM/UIM coverage. Plaintiff Lieberman's personal injury attorney  
25 advised Rawlings in writing that any such claim was unlawful under the above  
26 Insurance Code, that he was aware that REGENTS was doing the same thing to other  
27 employees and that Plaintiff was firm in his position that the practice was unlawful. In  
28

1 response, Rawlings attorney, acting as agent for the DEFENDANTS herein, responded  
2 with a letter dated October 16, 2017, rejecting plaintiff's position and insisting on a right  
3 to plaintiff's UM/UIM coverage under Insurance Code §11580.2. Since that date,  
4 Rawlings has continued to pursue reimbursement from plaintiff Lieberman's UM/UIM  
5 policy, through multiple e-mails, letters and telephone calls, all in violation of the  
6 Insurance Code section cited above.  
7

8 17. REGENTS' web site indicates that it has in excess of 185,000 employees.  
9 Plaintiff is informed and believes and thereon alleges that DEFENDANTS are pursuing  
10 this unlawful practice of demanding recovery from their own employees' UM/UIM  
11 recoveries throughout the State and it is believed that hundreds or thousands of such  
12 claims have been pursued by defendants within the four years prior to the filing of this  
13 complaint.  
14

#### 15 CLASS ALLEGATIONS

16 18. Plaintiff brings this class action pursuant to California Code of Civil  
17 Procedure §382. Plaintiff seeks to certify a Class composed of all persons who  
18 obtained requests for reimbursements from their UM/UIM awards from DEFENDANTS,  
19 and fall within Subclass A or B as follows:  
20

#### 21 SUBCLASS A

22 All present and previous employees of REGENTS who are  
23 currently facing DEFENDANTS' claims for reimbursement  
24 from their own UM/UIM claims but have not paid  
25 defendants from said coverage, and REGENTS employees  
26 who face such claims in the future.  
27  
28

**SUBCLASS B**

**All REGENTS employees who have paid reimbursement**

**Claims to DEFENDANTS or their agents from their**

**UM/UIM coverage since March 1, 2014.**

**NUMEROSITY**

19. The Class is so numerous that joinder of all individual members in one action would be impracticable. The disposition of the individual claims of the respective class members through this class action will benefit the parties in this Court.

20. Plaintiff is informed and believes, and thereon alleges, that there are, at a minimum, hundreds or thousands of such Class members.

21. The exact size of the Class and the identities of the individual members thereof are ascertainable through DEFENDANTS' records including, but not limited to, Defendants' transactions and through DEFENDANTS' agents acting on their behalf.

**TYPICALITY**

22. Plaintiff's claims are typical of the Class. The claims of the Plaintiff and the Class are based on the same legal theories and rise from the same unlawful conduct.

23. Plaintiff and the Class members all had their health coverage through their employment with defendant REGENTS, with each receiving demands for reimbursement for UM/UIM recoveries from Defendants. Therefore, DEFENDANTS were in violation of Insurance Code 11580.2(c)(4).

**COMMON QUESTIONS OF FACT AND LAW**

1           24. There is a well-defined community of interest and common questions of  
2 fact and law affecting members of the Class.

3           25. The questions of fact and law common to the Class predominate over  
4 questions which may affect individual members and include the following:  
5

6           a. Whether DEFENDANTS' conduct of seeking and receiving  
7 reimbursement from Plaintiff and Class members violated Insurance Code  
8 §11580.2(c)(4);  
9

10           b. Whether DEFENDANTS' conduct was willful;

11           c. Whether Plaintiff and Class members are entitled to restitution,  
12 costs and/or attorneys' fees for DEFENDANTS' acts and conduct; and

13           d. Whether Plaintiff and Class members are entitled to a permanent  
14 injunction enjoining DEFENDANTS from continuing to engage in its unlawful conduct.  
15

16                           **ADEQUACY OF REPRESENTATION**

17           26. Plaintiff is an adequate representative of the Class because his interests  
18 do not conflict with the interests of the Class. Plaintiff will fairly, adequately and  
19 vigorously represent and protect the interests of Class members and have no interests  
20 antagonistic to Class members. Plaintiff has retained counsel who are competent and  
21 experienced in the prosecution of class action litigation.  
22

23                           **SUPERIORITY**

24           27. A class action is superior to other available means for the fair and efficient  
25 adjudication of the Class' claims. The restitution to each Class member is easily  
26 ascertainable from DEFENDANTS own records. Plaintiff does not know of any other  
27 litigation concerning the controversy already commenced by or against any Class  
28



1 member. The likelihood of the individual Class members prosecuting separate claims is  
2 remote. Individualized litigation would also present the potential for varying,  
3 inconsistent or contradictory judgment, and would increase the delay and expense to all  
4 parties and the court system resulting from multiple trials of the same factual issues. In  
5 contrast, the conduct of this matter as a class action presents fewer management  
6 difficulties, conserves the resources of the parties and the court system, and would  
7 protect the rights of members of the Class. Plaintiff knows of no difficulty to be  
8 encountered in the management of this action that would preclude its maintenance as a  
9 class action.  
10  
11

#### 12 **FIRST CAUSE OF ACTION**

#### 13 **Complaint for Declaratory Relief**

#### 14 **(Against All DEFENDANTS and DOES 1-50)**

15  
16 28. Plaintiff and the Class incorporate by reference each of the preceding  
17 paragraphs as though fully set forth herein.

18 29. A Declaratory Judgment is necessary in that Plaintiff contends, and  
19 DEFENDANTS deny, the following:

20 The UC REGENTS and BLUE SHIELD's claim of reimbursement  
21 Rights to Plaintiff's UM/UIM proceeds is an unlawful act  
22 under Insurance Code 11580.2(c)(4) and said defendants' reimbursement  
23 provision in their health plan purporting to allow defendants to lay claim to  
24 employees' UM/UIM coverage is unlawful. (See attached Exhibit 1)  
25  
26  
27  
28

1           30. The DEFENDANTS have willfully violated Insurance Code 11580.2(c)(4) in  
2 conscious disregard of the rights of Plaintiff and Class members through demanding  
3 and/or obtaining reimbursement of UM/UIM awards in violation of the law.  
4

5  
6                                   **SECOND CAUSE OF ACTION**

7                           **Complaint for Preliminary and Permanent Injunctive Relief**  
8                           **(Against All DEFENDANTS and DOES 1-50)**  
9

10           31. Plaintiff and the Class incorporate by reference each of the preceding  
11 paragraphs as though fully set forth herein.

12           32. An actual controversy has arisen and now exists between the parties  
13 relating to the REGENTS' claimed entitlement to reimbursement for medical expenses  
14 paid under a group health plan from Plaintiff's policy proceeds.  
15

16           33. A preliminary and permanent injunction enjoining DEFENDANTS from  
17 asserting any right to restitution or reimbursement from uninsured or underinsured  
18 motorist insurance coverage under any group health plan issued by defendants is  
19 necessary to protect Plaintiffs in said group health plan(s).  
20

21           34. DEFENDANTS' actions were and continue to be willful. Defendants'  
22 conduct is continuing and unless restrained, DEFENDANTS will continue to engage in  
23 its unlawful conduct.

24           35. DEFENDANTS' wrongful conduct, unless and until enjoined and restrained  
25 by order of this court, will cause great and irreparable harm to Plaintiff and the Class  
26 because the mentioned violation by defendants will continue unabated.  
27  
28

**THIRD CAUSE OF ACTION**

**Unjust Enrichment/Restitution**

**(Against ALL DEFENDANTS and DOES 1-50)**

36. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth herein.

37. DEFENDANTS have been unjustly enriched as a result of the conduct described in this Complaint and other inequitable conduct.

38. Plaintiff alleges that DEFENDANTS' have pursued an unlawful practice of demanding recovery from their own employees' UM/UIM recoveries in violation of Insurance Code §11580.2(c)(4).

39. DEFENDANTS have been unjustly enriched by their unlawful retention of part of Plaintiffs' UM/UIM recoveries and it would be inequitable and unjust for DEFENDANTS to continue to retain those amounts.

40. Accordingly, Plaintiffs seek a return of all benefits that have been conferred on DEFENDANTS and by which they have been unjustly enriched in an amount to be proven at trial.

**FOURTH CAUSE OF ACTION**

**Violations of Business and Professions Code Section 17200, et seq.**

**Unlawful and Unfair Business Acts and Practice**

**(Against Blue Shield and DOES 1-50)**

41. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth herein.

1           42. Plaintiff asserts this Cause of Action individually and on behalf of all  
2 members of the Class against Defendant BLUE SHIELD and Does 1-50 for unlawful  
3 and unfair business practices, as defined by California Business and Professions Code  
4 §17200, *et seq.*

5  
6           43. Plaintiff is informed and believes and thereon alleges that said  
7 DEFENDANTS' conduct violates California Business and Professions Code §17200, *et*  
8 *seq.* The acts and practices of DEFENDANTS constitute a common continuing course  
9 of conduct of unfair competition by means of unlawful and unfair business acts or  
10 practices within the meaning of §17200.

11  
12           44. Pursuant to Business and Professions Code section 17203, Plaintiff and  
13 members of the Class seek from defendants, and each of them, restitution and  
14 disgorgement of all recoveries from REGENTS' employees UM/UIM coverage obtained  
15 through the Unlawful and Unfair Business Practices set forth in this Complaint and  
16 other ill-gotten gains obtained by DEFENDANTS as a result of DEFENDANTS' conduct  
17 in violation of Business and Professions Code section 17200 obtained through the  
18 Unlawful and Unfair Business Practices set forth in this Complaint and other ill-gotten  
19 gains obtained by DEFENDANTS as a result of DEFENDANTS' conduct in violation of  
20 Business and Professions Code section 17200.

21  
22           45. Pursuant to Business and Professions Code section 17204, Plaintiff and  
23 members of the Class seek an order of this Court enjoining DEFENDANTS, and each of  
24 them, from continuing to engage in the acts set forth in this Complaint, which acts  
25 constitute violations of Business and Professions Code section 17200, *et seq.* Plaintiff  
26 and the Class will be irreparably harmed if such an order is not granted.  
27  
28

1           46. Said employee benefit plans provided by Defendant BLUE SHIELD contain  
2 unlawful provisions purporting to allow BLUE SHIELD to seek reimbursement from  
3 Plaintiffs' UM/UIM coverage from the health plans which violate California Business and  
4 professions Code section 17200 et.seq and Insurance Code section 11580.2(c)(4).  
5

6           47. Participants and beneficiaries of said employee benefit plans who have  
7 paid any UM/UIM benefits to BLUE SHIELD in the past are entitled to restitution to  
8 recover those amounts collected in violation of California insurance law, and to prevent  
9 the unjust and illegal enrichment of BLUE SHIELD and/or its agents.  
10

11           48. Participants and beneficiaries of said employee benefits plans who have  
12 not paid any UM/UIM benefits to BLUE SHIELD but are subject to present or future  
13 claims against their UM/UIM benefits by BLUE SHIELD are entitled to a  
14 declaration/clarification of their right to present, or future benefits, without any such  
15 claims being asserted against their UM/UIM benefits.  
16

17           49. Plaintiff also seeks an order awarding attorneys' fees and costs pursuant  
18 to Code of Civil Procedure section 1021.5.

19           50. Plaintiff and the Class have suffered substantial injury in the form of  
20 actionable losses of money as a direct and proximate result of DEFENDANTS' unlawful  
21 and unfair business practices.  
22

23                           **PRAYER FOR RELIEF**

24           Plaintiff, on his own behalf and on behalf of the Class, pray for relief as follows,  
25 as applicable to the causes of action set forth above:  
26  
27  
28

1           1. For a Judicial Declaration that ALL DEFENDANTS have violated Insurance  
2 Code section 11580.2(c)(4), by demanding and laying claim to UM/UIM proceeds by the  
3 Plaintiff and the proposed Class.

4           2. For Preliminary and Permanent Injunctive Relief, enjoining ALL  
5 DEFENDANTS from continuing to assert any claims for reimbursement from the  
6 UM/UIM claims of the REGENTS employees.

7           3. For an Order certifying the proposed Class pursuant to Code of Civil  
8 Procedure section 382 and Civil Code section 1780, *et seq.* against ALL DEFENDANTS  
9 and appointing Plaintiff to represent the proposed Class and designating their attorneys  
10 as Class Counsel.

11           4. Under Business and Professions Code section 17203, Plaintiff, and the  
12 general public, seek an Order of this Court ordering BLUE SHIELD and DOES 1  
13 through 50 to immediately cease all acts of unfair competition and to enjoin said  
14 DEFENDANTS from continuing to conduct business via unlawful and/or unfair business  
15 acts or practices as particularized herein.

16           5. For Class Plaintiffs who have REGENTS health coverage and who have  
17 paid reimbursement from their UM/UIM recoveries to DEFENDANTS or their agents, an  
18 Order of restitution in the amount of the UM/UIM benefits paid.

19           6. For Class Plaintiffs who have REGENTS health coverage pursuant to the  
20 REGENTS employee benefit plan, and who are being subjected to a reimbursement  
21 claim by DEFENDANTS from their UM/UIM recoveries, a declaration and clarification of  
22 their right to be free of such claims.



1           7. For a preliminary and permanent injunction enjoining ALL DEFENDANTS  
2 from asserting any right to restitution or reimbursement from UM/UIM coverage under  
3 any disability or group health plan issued by REGENTS.  
4

5           8. For an Order requiring DEFENDANTS, and DOES 1 through 50, to give  
6 notice of this action, to participants in a REGENTS health plan, who within four years of  
7 the filing of the Complaint, had uninsured or underinsured motorist insurance policy  
8 proceeds paid over to DEFENDANTS or their agents.  
9

10           9. For an Order requiring DEFENDANTS and DOES 1 through 50, to identify  
11 all health plan members who, within four years of the filing of this Complaint, paid over  
12 uninsured and underinsured motorist policy benefits to defendants or their agents.  
13

14           10. For an Order directing REGENTS and BLUE SHIELD to notify all "Class  
15 Members" who are presently subject to its collection efforts against said members'  
16 UM/UIM coverage of this action and notifying said members of its withdrawal of any and  
17 all claims for reimbursement from such coverage.  
18


19           11. For an Order awarding Plaintiff and the Class restitution of all uninsured  
20 and underinsured policy benefits recovered from REGENTS group health plan  
21 participants and such other relief as the Court deems proper.  
22

23           12. For an Order declaring the rights and obligations of Plaintiff and Class  
24 Members, on the one hand, and BLUE SHIELD, on the other, with regard to the  
25 business practices alleged.  
26

27           13. For an Order awarding Plaintiffs' attorneys' fees, costs and expenses as  
28 authorized by applicable law; and  
29

          14. For such other and further relief as this Court may deem just and proper.

1 Dated: February 18, 2017

2  
3   
4 **O'MARA & PADILLA**  
5 By: MICHAEL D. PADILLA  
6 Law Offices of Donald M. de Camara  
7 Law Offices of Thomas D. Haklar  
8 Attorneys for Plaintiff  
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**VERIFICATION OF COMPLAINT**

I, David Lieberman, declare as follows:

1. I am the Plaintiff in the above-entitled action. I am a citizen and resident of the State of California.
2. I have personal knowledge of the facts alleged by me in the foregoing Complaint, and if called upon to testify I could competently testify to those facts, except as to those matters set forth on information and belief, and as to those matters, I am informed and believe them to be true.
3. I declare and verify under penalty of perjury under the laws of the State of California that I have read the foregoing Complaint and the factual allegations therein are true and correct.

Executed on February 23, 2018.

  
\_\_\_\_\_  
DAVID LIEBERMAN

## Core Plan

### **Benefit Booklet**

University of California

Group Number: W0051612

Plan ID: PPOX0002

Effective Date: January 1, 2016

An independent member of the Blue Shield Association

blue  of california  
Claims Administered by Blue Shield of California

[blueshieldca.com](http://blueshieldca.com)

**EXHIBIT 1**

vided to you at a Veterans Administration facility for a condition that is not related to military service. If you are a qualified veteran who is not on active duty, your Claims Administrator group plan will pay the reasonable value or the Claims Administrator's Allowable Amount for Covered Services provided to you at a Department of Defense facility, even if provided for conditions related to military service.

**When you are covered by another government agency**

If you are also entitled to benefits under any other federal or state governmental agency, or by any municipality, county or other political subdivision, the combined benefits from that coverage and your Claims Administrator group plan will equal, but not exceed, what the Claims Administrator would have paid if you were not eligible to receive benefits under that coverage (based on the reasonable value or the Claims Administrator's Allowable Amount).

Contact the Customer Service department at the telephone number shown at the end of this document if you have any questions about how the Claims Administrator coordinates your group plan benefits in the above situations.

**EXCEPTION FOR OTHER COVERAGE**

Participating Providers and Preferred Providers may seek reimbursement from other third party payers for the balance of their reasonable charges for Services rendered under this Plan.

**CLAIMS REVIEW**

The Claims Administrator reserves the right to review all claims to determine if any exclusions or other limitations apply. The Claims Administrator may use the services of Physician consultants, peer review committees of professional societies or Hospitals and other consultants to evaluate claims.

**REDUCTIONS – THIRD PARTY LIABILITY**

If a Member's injury or illness was, in any way, caused by a third party who may be legally liable or responsible for the injury or illness, no benefits will be payable or paid under the Plan unless the Member agrees in writing, in a form satisfactory to the Plan, to do all of the following:

1. Provide the Plan with a written notice of any claim made against the third party for damages as a result of the injury or illness;
2. Agree in writing to reimburse the Plan for Benefits paid by the Plan from any Recovery (defined below) when the Recovery is obtained from or on behalf of the third party or the insurer of the third party, or from the Member's own uninsured or underinsured motorist coverage;
3. Execute a lien in favor of the Plan for the full amount of Benefits paid by the Plan;

4. Ensure that any Recovery (see below) is kept separate from and not comingled with any other funds and agree in writing that the portion of any Recovery required to satisfy the lien of the Plan is held in trust for the sole benefit of the Plan until such time it is conveyed to the Plan;
5. Periodically respond to information requests regarding the claim against the third party, and notify the Plan, in writing, within 10 days after any Recovery has been obtained;
6. Direct any legal counsel retained by the Member or any other person acting on behalf of the Member to hold that portion of the Recovery to which the Plan is entitled in trust for the sole benefit of the Plan and to comply with and facilitate the reimbursement to the Plan of the monies owed it.

If a Member fails to comply with the above requirements, no benefits will be paid with respect to the injury or illness. If Benefits have been paid, they may be recouped by the Plan, through deductions from future benefit payments to the Member or others enrolled through the Member in the Plan.

"Recovery" includes any amount awarded to or received by way of court judgment, arbitration award, settlement or any other arrangement, from any third party or third party insurer, or from your uninsured or underinsured motorist coverage, related to the illness or injury, without reduction for any attorneys' fees paid or owed by the Member or on the Member's behalf, and without regard to whether the Member has been "made whole" by the Recovery. Recovery does not include monies received from any insurance policy or certificate issued in the name of the Member, except for uninsured or underinsured motorist coverage. The Recovery includes all monies received, regardless of how held, and includes monies directly received as well as any monies held in any account or trust on behalf of the Member, such as an attorney-client trust account.

The Member shall pay to the Plan from the Recovery an amount equal to the Benefits actually paid by the Plan in connection with the illness or injury. If the Benefits paid by the Plan in connection with the illness or injury exceed the amount of the Recovery, the Member shall not be responsible to reimburse the Plan for the Benefits paid in connection with the illness or injury in excess of the Recovery.

The Member's acceptance of Benefits from the Plan for illness or injury caused by a third party shall act as a waiver of any defense to full reimbursement of the Plan from the Recovery, including any defense that the injured individual has not been "made whole" by the Recovery or that the individual's attorneys fees and costs, in whole or in part, are required to be paid or are payable from the Recovery, or that the Plan should pay a portion of the attorneys fees and costs incurred in connection with the claims against the third party.

If the Member receives Services from a Participating Hospital for injuries or illness, the Hospital has the right to collect from the Member the difference between the amount paid by the Plan and the Hospital's reasonable and necessary charges for such Services when payment or reimbursement is received by the Member for medical expenses. The Hospital's right to collect shall be in accordance with California Civil Code Section 3045.1.

#### COORDINATION OF BENEFITS

When a Member who is covered under this group Plan is also covered under another group plan, or selected group, or blanket disability insurance contract, or any other contractual arrangement or any portion of any such arrangement whereby the members of a group are entitled to payment of or reimbursement for Hospital or medical expenses, such Member will not be permitted to make a "profit" on a disability by collecting benefits in excess of actual cost during any Calendar Year. Instead, payments will be coordinated between the plans in order to provide for "allowable expenses" (these are the expenses that are Incurred for services and supplies covered under at least one of the plans involved) up to the maximum benefit amount payable by each plan separately.

If the covered Member is also entitled to benefits under any of the conditions as outlined under the "Limitations for Duplicate Coverage" provision, benefits received under any such condition will not be coordinated with the benefits of this Plan.

The following rules determine the order of benefit payments:

When the other plan does not have a coordination of benefits provision it will always provide its benefits first. Otherwise, the plan covering the Member as an Employee will provide its benefits before the plan covering the Member as a Dependent.

Except for cases of claims for a Dependent child whose parents are separated or divorced, the plan which covers the Dependent child of a Member whose date of birth (excluding year of birth), occurs earlier in a Calendar Year, will determine its benefits before a plan which covers the Dependent child of a Member whose date of birth (excluding year of birth), occurs later in a Calendar Year. If either plan does not have the provisions of this paragraph regarding Dependents, which results either in each plan determining its benefits before the other or in each plan determining its benefits after the other, the provisions of this paragraph will not apply, and the rule set forth in the plan which does not have the provisions of this paragraph will determine the order of benefits.

1. In the case of a claim involving expenses for a Dependent child whose parents are separated or divorced, plans covering the child as a Dependent will determine their respective benefits in the following order: First, the plan of the parent with custody of the child; then, if that parent has remarried, the plan of the stepparent with

custody of the child; and finally the plan(s) of the parent(s) without custody of the child.

2. Regardless of (1.) above, if there is a court decree which otherwise establishes financial responsibility for the medical, dental or other health care expenses of the child, then the plan which covers the child as a Dependent of that parent will determine its benefits before any other plan which covers the child as a Dependent child.
3. If the above rules do not apply, the plan which has covered the Member for the longer period of time will determine its benefits first, provided that:
  - a. a plan covering a Member as a laid-off or retired Employee, or as a Dependent of that Member will determine its benefits after any other plan covering that Member as an Employee, other than a laid-off or retired Employee, or such Dependent; and
  - b. if either plan does not have a provision regarding laid-off or retired Employees, which results in each plan determining its benefits after the other, then paragraph (a.) above will not apply.

If this Plan is the primary carrier in the case of a covered Member, then this Plan will provide its Benefits without making any reduction because of benefits available from any other plan, except that Physician Members and other Participating Providers may collect any difference between their billed charges and this Plan's payment, from the secondary carrier(s).

If this Plan is the secondary carrier in the order of payments, and the Claims Administrator is notified that there is a dispute as to which plan is primary, or that the primary plan has not paid within a reasonable period of time, this Plan will pay the benefits that would be due as if it were the primary plan, provided that the covered Member (1) assigns to the Claims Administrator the right to receive benefits from the other plan to the extent of the difference between the benefits which the Claims Administrator actually pays and the amount that the Claims Administrator would have been obligated to pay as the secondary plan, (2) agrees to cooperate fully with the Claims Administrator in obtaining payment of benefits from the other plan, and (3) allows the Claims Administrator to obtain confirmation from the other plan that the benefits which are claimed have not previously been paid.

If payments which should have been made under this Plan in accordance with these provisions have been made by another plan, the Claims Administrator may pay to the other plan the amount necessary to satisfy the intent of these provisions. This amount shall be considered as Benefits paid under this Plan. The Claims Administrator shall be fully discharged from liability under this Plan to the extent of these payments.

If payments have been made by the Claims Administrator in excess of the maximum amount of payment necessary to satisfy these provisions, the Claims Administrator shall



# SUMMONS (CITACION JUDICIAL)

SUM-100

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT: REGENTS OF THE UNIVERSITY OF  
(AVISO AL DEMANDADO): CALIFORNIA; BLUE SHIELD OF  
CALIFORNIA, and DOES 1 to 50, inclusive**

ORIGINAL

**YOU ARE BEING SUED BY PLAINTIFF: DAVID LIEBERMAN,  
(LO ESTÁ DEMANDANDO EL DEMANDANTE): Individually and on  
Behalf of all Others Similarly Situated**

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

SAN FRANCISCO COUNTY SUPERIOR COURT  
400 McAllister Street  
San Francisco, CA 94102  
CIVIL CENTER COURTHOUSE

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

MICHAEL D. PADILLA, SBN 67060/JEFFREY M. PADILLA, SBN 239693 T 858-481-5454 F 858-720-9797  
O'MARA & PADILLA  
320 Encinitas Blvd., Suite A  
Encinitas, CA 92024

DATE:

**MAR 12 2018**

(Fecha)

**Clerk of the Court**

Clerk, by

(Secretario)

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

**NEYL WEBB**

**NOTICE TO THE PERSON SERVED:** You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☐ on behalf of (specify):

- under:
- |  |   |
|--|---|
| <input type="checkbox"/> CCP 416.10 (corporation)                | <input type="checkbox"/> CCP 416.60 (minor)             |
| <input type="checkbox"/> CCP 416.20 (defunct corporation)        | <input type="checkbox"/> CCP 416.70 (conservatee)       |
| <input type="checkbox"/> CCP 416.40 (association or partnership) | <input type="checkbox"/> CCP 416.90 (authorized person) |
| <input type="checkbox"/> other (specify):                        |   |

- ☐ by personal delivery on (date):

Page 1 of 1



## **EXHIBIT B**

March 22, 2018

Advanced Attorney Services, Inc. fax (615) 299-5058

POS-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) <b>MICHAEL D. PADILLA, ESQ.</b> <b>O'MARA &amp; PADILLA</b> <b>320 ENCINITAS BLVD., SUITE A ENCINITAS, CA 92024</b> TELEPHONE NO.: (858) 481-5454 FAX NO. (Optional): (858) 720-9797 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): <b>Plaintiff: DAVID LIEBERMAN</b>		FOR COURT USE ONLY  <b>ELECTRONICALLY FILED</b> Superior Court of California, County of San Francisco <b>04/16/2018</b> Clerk of the Court BY: YOLANDA TABO-RAMI Deputy Clerk	
<b>SUPERIOR COURT OF CALIFORNIA, SAN FRANCISCO</b> STREET ADDRESS: 400 MCALLISTER STREET, ROOM 103 MAILING ADDRESS: CITY AND ZIP CODE: <b>SAN FRANCISCO, CA 94102</b> BRANCH NAME: CIVIC CENTER		CASE NUMBER: <b>CGC-18-564930</b>	
PLAINTIFF/PETITIONER: <b>DAVID LIEBERMAN, ET AL</b> DEFENDANT/RESPONDENT: <b>REGENTS OF THE UNIVERSITY OF CALIFORNIA, ET AL</b>		Ref. No. or File No.: <b>LIEBERMAN</b>	
<b>PROOF OF SERVICE OF SUMMONS</b>			

(Separate proof of service is required for each party served.)

BY FAX

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of:
  - a. ☒ summons
  - b. ☒ complaint
  - c. ☐ Alternative Dispute Resolution (ADR) package
  - d. ☐ Civil Case Cover Sheet (served in complex cases only)
  - e. ☐ cross-complaint
  - f. ☒ other (specify documents): **CIVIL CASE COVER SHEET; NTC TO PLAINTIFF; MEDIATION SERVICES HANDOUT; ADR PROGRAM INFO PKG; EXPEDITED JURY TRIAL INFO SHEET; STIP TO USE ADR AND CASE MGT STATEMENT**
3. a. Party served (specify name of party as shown on documents served):  
**BLUE SHIELD OF CALIFORNIA**
- b. ☒ Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (specify name and relationship to the party named in item 3a):  
**BRETON NICOLSON - PERSON AUTHORIZED TO ACCEPT**
4. Address where the party was served: **50 BEALE STREET**  
**SAN FRANCISCO, CA 94105**
5. I served the party (check proper box)
  - a. ☒ **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): **03/21/2018** (2) at (time): **02:20 pm**
  - b. ☐ **by substituted service.** On (date): at (time): I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3b):
    - (1) ☐ **(business)** a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
    - (2) ☐ **(home)** a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
    - (3) ☐ **(physical address unknown)** a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
    - (4) ☐ I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., §415.20). I mailed the documents on (date): from (city): or ☐ a declaration of mailing is attached.
    - (5) ☐ I attach a **declaration of diligence** stating actions taken first to attempt personal service.

March 22, 2018

Advanced Attorney Services, Inc. fax (619) 299-5058

PETITIONER: DAVID LIEBERMAN, ET AL

CASE NUMBER:

RESPONDENT: REGENTS OF THE UNIVERSITY OF CALIFORNIA, ET AL BY FAX

CGC-18-564930

- c. ☐ by mail and acknowledgment of receipt of service. I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,
- (1) on (date): (2) from (city):
- (3) ☐ with two copies of the *Notice and Acknowledgment of Receipt* and a postage-paid return envelope addressed to me. (Attach completed *Notice and Acknowledgment of Receipt*.) (Code Civ. Proc., § 415.30.)
- (4) ☐ to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)
- d. ☐ by other means (specify means of service and authorizing code section):

☐ Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

- a. ☐ as an individual defendant.
- b. ☐ as the person sued under the fictitious name of (specify):
- c. ☐ as occupant.
- d. ☒ On behalf of (specify): **BLUE SHIELD OF CALIFORNIA**  
under the following Code of Civil Procedure section:

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> 416.10 (corporation)          | <input type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation)             | <input type="checkbox"/> 416.60 (minor)                               |
| <input type="checkbox"/> 416.30 (joint stock company/association) | <input type="checkbox"/> 416.70 (ward or conservatee)                 |
| <input type="checkbox"/> 416.40 (association or partnership)      | <input type="checkbox"/> 416.90 (authorized person)                   |
| <input type="checkbox"/> 416.50 (public entity)                   | <input type="checkbox"/> 415.46 (occupant)                            |
|   | <input type="checkbox"/> other:                                       |

7. Person who served papers

- a. Name: **ANDY ESQUER - Advanced Attorney Services, Inc.**
- b. Address: **3500 Fifth Ave., Suite 202 San Diego, CA 92103**
- c. Telephone number: **(619) 299-2012**
- d. The fee for service was: \$ **142.90**
- e. I am:

- (1) ☐ not a registered California process server.
- (2) ☐ exempt from registration under Business and Professions Code section 22350(b).
- (3) ☒ registered California process server:
- (i) ☐ owner ☐ employee ☒ independent contractor.
- (ii) Registration No.: **2015-0001009**
- (iii) County: **SAN FRANCISCO**

8. ☒ I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

or

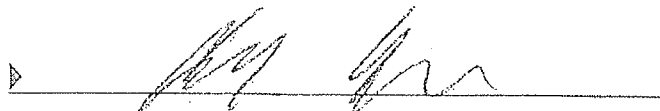
9. ☐ I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date: 03/22/2018

Advanced Attorney Services, Inc.  
3500 Fifth Ave., Suite 202  
San Diego, CA 92103  
(619) 299-2012  
San Diego County: 1584

ANDY ESQUER

(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)



March 26, 2018

Advanced Attorney Services, Inc. fax (519) 269-5058

POS-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) <b>MICHAEL D. PADILLA, ESQ.</b> <b>O'MARA &amp; PADILLA</b> <b>320 ENCINITAS BLVD., SUITE A ENCINITAS, CA 92024</b> TELEPHONE NO.: (858) 481-5454 FAX NO. (Optional): (858) 720-9797 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiff: DAVID LIEBERMAN		FOR COURT USE ONLY  <b>ELECTRONICALLY FILED</b> Superior Court of California, County of San Francisco <b>04/16/2018</b> Clerk of the Court BY: YOLANDA TABO-RAMIL Deputy Clerk	
SUPERIOR COURT OF CALIFORNIA, SAN FRANCISCO STREET ADDRESS: 400 MCALLISTER STREET, ROOM 103 MAILING ADDRESS: CITY AND ZIP CODE: SAN FRANCISCO, CA 94102 BRANCH NAME: CIVIC CENTER		CASE NUMBER: CGC-18-564930	
PLAINTIFF/PETITIONER: DAVID LIEBERMAN, ET AL. DEFENDANT/RESPONDENT: REGENTS OF THE UNIVERSITY OF CALIFORNIA, ET AL.		Ref. No. or File No.: LIEBERMAN	
<b>PROOF OF SERVICE OF SUMMONS</b>		Ref. No. or File No.: LIEBERMAN	

(Separate proof of service is required for each party served.)

BY FAX

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of:
  - a. ☒ summons
  - b. ☒ complaint
  - c. ☐ Alternative Dispute Resolution (ADR) package
  - d. ☐ Civil Case Cover Sheet (served in complex cases only)
  - e. ☐ cross-complaint
  - f. ☒ other (specify documents): CIVIL CASE COVER SHEET; NTC TO PLAINTIFF; MEDIATION SERVICES HANDOUT; ADR PROGRAM INFO PKG, EXPEDITED JURY TRIAL INFO SHEET; STIP TO USE ADR AND CASE MGT STATEMENT
3. a. Party served (specify name of party as shown on documents served):  
**REGENTS OF THE UNIVERSITY OF CALIFORNIA**
- b. ☒ Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (specify name and relationship to the party named in item 3a):  
**TRINA D. MASTRO, ESQ. - PERSON AUTHORIZED TO ACCEPT**
4. Address where the party was served: **1111 FRANKLIN STREET, 8TH FLOOR**  
**OAKLAND, CA 94607**
5. I served the party (check proper box)
  - a. ☒ **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): **03/21/2018** (2) at (time): **11:23 am**
  - b. ☐ **by substituted service.** On (date): at (time): I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3b):
    - (1) ☐ **(business)** a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
    - (2) ☐ **(home)** a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
    - (3) ☐ **(physical address unknown)** a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
    - (4) ☐ I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., §415.20). I mailed the documents on (date): from (city): or ☐ a declaration of mailing is attached.
    - (5) ☐ I attach a declaration of diligence stating actions taken first to attempt personal service.



March 26, 2018

Advanced Attorney Services, Inc. fax (619) 299-5058

PETITIONER: DAVID LIEBERMAN, ET AL.

CASE NUMBER:

RESPONDENT: REGENTS OF THE UNIVERSITY OF CALIFORNIA, ET AL BY FAX

CGC-18-564930

- c. ☐ by mail and acknowledgment of receipt of service. I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,

(1) on (date):

(2) from (city):

- (3) ☐ with two copies of the *Notice and Acknowledgment of Receipt* and a postage-paid return envelope addressed to me. (Attach completed *Notice and Acknowledgment of Receipt*.) (Code Civ. Proc., § 415.30.)

- (4) ☐ to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)

- d. ☐ by other means (specify means of service and authorizing code section):

☐ Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

- a. ☐ as an individual defendant.  
 b. ☐ as the person sued under the fictitious name of (specify):  
 c. ☐ as occupant.  
 d. ☒ On behalf of (specify): **REGENTS OF THE UNIVERSITY OF CALIFORNIA**  
 under the following Code of Civil Procedure section:

- |   |   |
|---|---|
| <input type="checkbox"/> 416.10 (corporation)                     | <input type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation)             | <input type="checkbox"/> 416.60 (minor)                               |
| <input type="checkbox"/> 416.30 (joint stock company/association) | <input type="checkbox"/> 416.70 (ward or conservatee)                 |
| <input type="checkbox"/> 416.40 (association or partnership)      | <input type="checkbox"/> 416.90 (authorized person)                   |
| <input checked="" type="checkbox"/> 416.50 (public entity)        | <input type="checkbox"/> 415.46 (occupant)                            |
|   | <input type="checkbox"/> other:                                       |

7. Person who served papers

- a. Name: **ISAAC G. MEYNARD - Advanced Attorney Services, Inc.**  
 b. Address: **3500 Fifth Ave., Suite 202 San Diego, CA 92103**  
 c. Telephone number: **(619) 299-2012**  
 d. The fee for service was: **\$ 142.90**  
 e. I am:

- (1) ☐ not a registered California process server.  
 (2) ☐ exempt from registration under Business and Professions Code section 22350(b).  
 (3) ☒ registered California process server:  
     (i) ☐ owner ☐ employee ☒ independent contractor.  
     (ii) Registration No.: **2016-0001159**  
     (iii) County: **SAN FRANCISCO**

8. ☒ I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

or

9. ☐ I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date: 03/26/2018

Advanced Attorney Services, Inc.  
 3500 Fifth Ave., Suite 202  
 San Diego, CA 92103  
 (619) 299-2012  
 San Diego County: 1584

ISAAC G. MEYNARD

(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)

D

## **EXHIBIT C**



CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Gregory Pimstone (SBN 150203), Joseph Laska (SBN 221055) MANATT, PHELPS & PHILLIPS, LLP One Embarcadero Center, 30th Floor San Francisco, California 94111 TELEPHONE NO.: (415) 291-7446 FAX NO.: (415) 291-7474 ATTORNEY FOR (Name): Defendant Blue Shield of California		FOR COURT USE ONLY  <div style="text-align: center; font-weight: bold; font-size: 1.2em;">ELECTRONICALLY FILED</div> <div style="text-align: center; font-size: 0.8em;">Superior Court of California, County of San Francisco</div> <div style="text-align: center; font-weight: bold; font-size: 1.1em;">05/01/2018</div> <div style="text-align: center; font-weight: bold; font-size: 0.9em;">Clerk of the Court</div> <div style="text-align: center; font-weight: bold; font-size: 0.8em;">BY: ERNALYN BURA Deputy Clerk</div>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco STREET ADDRESS: 400 McAllister St. MAILING ADDRESS: 400 McAllister St. CITY AND ZIP CODE: San Francisco, CA 94102-4515 BRANCH NAME: Civic Center Courthouse		CASE NUMBER: <div style="text-align: center; font-weight: bold; font-size: 1.1em;">CGC-18-564930</div>
CASE NAME: Lieberman et al. v. Regents of the University of California, et al.		
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000)	<input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)	<b>Complex Case Designation</b> <input checked="" type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
JUDGE: Presiding Judge DEPT: Dept 206 (Master Calendar)		DEPT: Dept 206 (Master Calendar)

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <b>Non-PI/PD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input checked="" type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation</b> (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
--	---	---

2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |  |  |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties<br>b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve<br>c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | d. <input checked="" type="checkbox"/> Large number of witnesses<br>e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court<br>f. <input checked="" type="checkbox"/> Substantial postjudgment judicial supervision |
|--|--|
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): Four (4) causes of action
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 5/1/2018

Joseph Laska

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

CM-010

## INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

## CASE TYPES AND EXAMPLES

## Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death  
Uninsured Motorist (46) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

## Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)  
Asbestos Property Damage  
Asbestos Personal Injury/Wrongful Death  
Product Liability *(not asbestos or toxic/environmental)* (24)  
Medical Malpractice (45)  
Medical Malpractice—Physicians & Surgeons  
Other Professional Health Care Malpractice  
Other PI/PD/WD (23)  
Premises Liability (e.g., slip and fall)  
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)  
Intentional Infliction of Emotional Distress  
Negligent Infliction of Emotional Distress  
Other PI/PD/WD

## Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)  
Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)  
Defamation (e.g., slander, libel) (13)  
Fraud (16)  
Intellectual Property (19)  
Professional Negligence (25)  
Legal Malpractice  
Other Professional Malpractice *(not medical or legal)*  
Other Non-PI/PD/WD Tort (35)

## Employment

Wrongful Termination (36)  
Other Employment (15)

## Contract

Breach of Contract/Warranty (06)  
Breach of Rental/Lease  
Contract *(not unlawful detainer or wrongful eviction)*  
Contract/Warranty Breach—Seller Plaintiff *(not fraud or negligence)*  
Negligent Breach of Contract/Warranty  
Other Breach of Contract/Warranty  
Collections (e.g., money owed, open book accounts) (09)  
Collection Case—Seller Plaintiff  
Other Promissory Note/Collections Case  
Insurance Coverage *(not provisionally complex)* (18)  
Auto Subrogation  
Other Coverage  
Other Contract (37)  
Contractual Fraud  
Other Contract Dispute

## Real Property

Eminent Domain/Inverse Condemnation (14)  
Wrongful Eviction (33)  
Other Real Property (e.g., quiet title) (26)  
Writ of Possession of Real Property  
Mortgage Foreclosure  
Quiet Title  
Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

## Unlawful Detainer

Commercial (31)  
Residential (32)  
Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

## Judicial Review

Asset Forfeiture (05)  
Petition Re: Arbitration Award (11)  
Writ of Mandate (02)  
Writ—Administrative Mandamus  
Writ—Mandamus on Limited Court Case Matter  
Writ—Other Limited Court Case Review  
Other Judicial Review (39)  
Review of Health Officer Order  
Notice of Appeal—Labor  
Commissioner Appeals

## Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)  
Construction Defect (10)  
Claims Involving Mass Tort (40)  
Securities Litigation (28)  
Environmental/Toxic Tort (30)  
Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)

## Enforcement of Judgment

Enforcement of Judgment (20)  
Abstract of Judgment (Out of County)  
Confession of Judgment *(non-domestic relations)*  
Sister State Judgment  
Administrative Agency Award *(not unpaid taxes)*  
Petition/Certification of Entry of Judgment on Unpaid Taxes  
Other Enforcement of Judgment Case

## Miscellaneous Civil Complaint

RICO (27)  
Other Complaint *(not specified above)* (42)  
Declaratory Relief Only  
Injunctive Relief Only *(non-harassment)*  
Mechanics Lien  
Other Commercial Complaint Case *(non-tort/non-complex)*  
Other Civil Complaint *(non-tort/non-complex)*

## Miscellaneous Civil Petition

Partnership and Corporate Governance (21)  
Other Petition *(not specified above)* (43)  
Civil Harassment  
Workplace Violence  
Elder/Dependent Adult Abuse  
Election Contest  
Petition for Name Change  
Petition for Relief From Late Claim  
Other Civil Petition

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Joshua S. Goodman (SBN 116576), Patricia L. Bonheyo (SBN 194155) GOODMAN NEUMAN HAMILTON, LLP 417 Montgomery St., 10th Floor San Francisco, California 94104 TELEPHONE NO.: (415) 705-0400 FAX NO.: (415) 705-0411 ATTORNEY FOR (Name): Defendant Regents of the University of California		FOR COURT USE ONLY  <b>ELECTRONICALLY FILED</b> Superior Court of California, County of San Francisco <b>05/01/2018</b> Clerk of the Court BY: ANNA TORRES Deputy Clerk	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco STREET ADDRESS: 400 McAllister St. MAILING ADDRESS: 400 McAllister St. CITY AND ZIP CODE: San Francisco, CA 94102-4515 BRANCH NAME: Civic Center Courthouse		CASE NAME: Lieberman et al. v. Regents of the University of California, et al.	
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)		<b>Complex Case Designation</b> <input checked="" type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	
		CASE NUMBER: CGC-18-564930	
		JUDGE: Presiding Judge DEPT: Dept 206 (Master Calendar)	

Items 1-6 below must be completed (see instructions on page 2):

1. Check **one** box below for the case type that best describes this case:
- |  |   |  |
|--|---|--|
| <b>Auto Tort</b><br><input type="checkbox"/> Auto (22)<br><input type="checkbox"/> Uninsured motorist (46)<br><b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b><br><input type="checkbox"/> Asbestos (04)<br><input type="checkbox"/> Product liability (24)<br><input type="checkbox"/> Medical malpractice (45)<br><input type="checkbox"/> Other PI/PD/WD (23)<br><b>Non-PI/PD/WD (Other) Tort</b><br><input type="checkbox"/> Business tort/unfair business practice (07)<br><input type="checkbox"/> Civil rights (08)<br><input type="checkbox"/> Defamation (13)<br><input type="checkbox"/> Fraud (16)<br><input type="checkbox"/> Intellectual property (19)<br><input type="checkbox"/> Professional negligence (25)<br><input type="checkbox"/> Other non-PI/PD/WD tort (35)<br><b>Employment</b><br><input type="checkbox"/> Wrongful termination (36)<br><input type="checkbox"/> Other employment (15) | <b>Contract</b><br><input type="checkbox"/> Breach of contract/warranty (06)<br><input type="checkbox"/> Rule 3.740 collections (09)<br><input type="checkbox"/> Other collections (09)<br><input checked="" type="checkbox"/> Insurance coverage (18)<br><input type="checkbox"/> Other contract (37)<br><b>Real Property</b><br><input type="checkbox"/> Eminent domain/Inverse condemnation (14)<br><input type="checkbox"/> Wrongful eviction (33)<br><input type="checkbox"/> Other real property (26)<br><b>Unlawful Detainer</b><br><input type="checkbox"/> Commercial (31)<br><input type="checkbox"/> Residential (32)<br><input type="checkbox"/> Drugs (38)<br><b>Judicial Review</b><br><input type="checkbox"/> Asset forfeiture (05)<br><input type="checkbox"/> Petition re: arbitration award (11)<br><input type="checkbox"/> Writ of mandate (02)<br><input type="checkbox"/> Other judicial review (39) | <b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</b><br><input type="checkbox"/> Antitrust/Trade regulation (03)<br><input type="checkbox"/> Construction defect (10)<br><input type="checkbox"/> Mass tort (40)<br><input type="checkbox"/> Securities litigation (28)<br><input type="checkbox"/> Environmental/Toxic tort (30)<br><input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)<br><b>Enforcement of Judgment</b><br><input type="checkbox"/> Enforcement of judgment (20)<br><b>Miscellaneous Civil Complaint</b><br><input type="checkbox"/> RICO (27)<br><input type="checkbox"/> Other complaint (not specified above) (42)<br><b>Miscellaneous Civil Petition</b><br><input type="checkbox"/> Partnership and corporate governance (21)<br><input type="checkbox"/> Other petition (not specified above) (43) |
|--|---|--|
2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |  |  |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties<br>b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve<br>c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | d. <input checked="" type="checkbox"/> Large number of witnesses<br>e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court<br>f. <input checked="" type="checkbox"/> Substantial postjudgment judicial supervision |
|--|--|
3. Remedies sought (check all that apply): a. ☒ monetary    b. ☒ nonmonetary; declaratory or injunctive relief    c. ☐ punitive
4. Number of causes of action (specify): Four (4) causes of action
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 5/1/2018

Joshua S. Goodman

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

**PROOF OF SERVICE**

**CASE NAME:** *Lieberman, et al. v. Regents of the University of California, et al.*

**CASE NUMBER:** CGC-18-564930

**DATE OF SERVICE:** May 1, 2018

**DESCRIPTION OF DOCUMENTS SERVED:**

**CIVIL CASE COVER SHEET – COMPLEX CASE DESIGNATION**

**SERVED ON THE FOLLOWING:**

Michael Padilla

Jeffrey Padilla

O'MARA & PADILLA

320 Encinitas Blvd., Suite A

Encinitas, CA 92024

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*Attorneys for Plaintiffs*

Thomas D. Haklar

LAW OFFICE OF THOMAS D. HAKLAR

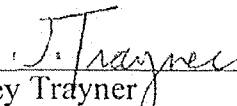
320 Encinitas Blvd., Suite A

Encinitas, CA 92024

*Attorneys for Plaintiffs*

I am over the age of 18 years and not a party to or interested in the above-named case. I am an employee of Goodman Neuman Hamilton LLP, and my business address is 417 Montgomery Street, 10th Floor, San Francisco, CA 94104. On the date stated above, I served the above-entitled document(s) through File & ServeXpress addressed to all parties appearing on the File & ServeXpress electronic service list by selecting the individual recipients on the File & ServeXpress website. The file transmission was reported as complete and a copy of the filing receipt page will be maintained with the original document in our office.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on the date stated above.

  
Jeffrey Trayner



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Attorneys for Defendant  
BLUE SHIELD OF CALIFORNIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

DAVID LIEBERMAN, individually and on  
behalf of all others similarly situated,

Plaintiffs,

vs.

REGENTS OF THE UNIVERSITY OF  
CALIFORNIA; BLUE SHIELD OF  
CALIFORNIA; and DOES 1 THROUGH  
50, INCLUSIVE,

Defendants.

Case No. CGC-18-564930

**FILED AS CLASS ACTION**

**DEFENDANT BLUE SHIELD OF  
CALIFORNIA'S UNOPPOSED  
APPLICATION FOR APPROVAL OF  
COMPLEX DESIGNATION**

ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco  
**05/15/2018**  
Clerk of the Court  
BY: JUDITH NUNEZ  
Deputy Clerk

1 **I. INTRODUCTION**

2 Defendant Blue Shield of California (“Blue Shield”) files this Application for Approval of  
 3 Complex Designation under California Rule of Court 3.400. This putative class action meets the  
 4 criteria for designation as a complex case. The case is provisionally complex because it is a state-  
 5 wide class action. As set forth below, it also satisfies the discretionary criteria for complex  
 6 designation.

7 Blue Shield met and conferred with counsel for Plaintiff and Defendant Regents of the  
 8 University of California (“UC Regents”). Neither Plaintiff nor UC Regents objects to this case  
 9 being designated complex.

10 **II. ARGUMENT**

11 **A. Legal standard**

12 “A ‘complex case’ is an action that requires exceptional judicial management to avoid  
 13 placing unnecessary burdens on the Court or the litigants and to expedite the case, keep costs  
 14 reasonable, and promote effective decision making by the court, the parties, and counsel.” Cal.  
 15 Rule of Ct. 3.400(a).

16 A case is deemed “provisionally complex” if it involves “claims involving class actions”  
 17 or “[i]nsurance coverage claims arising out of [class actions].” Cal. Rule of Ct. 3.400(d)(6)-(7).

18 A complex designation is also appropriate if the action is likely to involve:

- 19 (1) Numerous pretrial motions raising difficult or novel legal issues that will be time  
 20 consuming to resolve;
- 21 (2) Management of a large number of witnesses or a substantial amount of documentary  
 22 evidence;
- 23 (3) Management of a large number of separately represented parties;
- 24 (4) Coordination with related actions pending in one or more courts in other counties,  
 25 states, or countries, or in a federal court; or
- 26 (5) Substantial postjudgment judicial supervision.

27 Cal. Rule of Ct. 3.400(b).

**B. This state-wide class action meets the criteria for complex designation.**

This putative class action meets the criteria for designation as a complex case.

First, the action is provisionally complex because it is putative class action. Cal. Rule of Ct. 3.400(d)(6). As alleged, the case is state-wide and would affect potentially thousands of UC Regents employees across the state of California.

Second, the action is likely to involve extensive motion practice raising difficult or novel issues that will be time consuming to resolve. Plaintiff David Lieberman is a professor of law at University of California, Berkeley. He alleges that a provision in the UC Regents' health plan, which is administered by Blue Shield, is unlawful under Insurance Code Section 11580.2. More specifically, he alleges that the UC Regents health plan provides that UC Regents may recover amounts received by an insured employee from uninsured and underinsured coverage. (Compl. ¶ 4.) He alleges that Section 11580.2 prohibits such language. (*Id.* ¶¶ 5-6.) The parties dispute the meaning of Section 11580.2, which was enacted in 1972—specifically, they dispute the meaning of “directly to the benefit of” and whether UC Regents constitutes a “state or political subdivision.” These disputes raise novel legal questions that the Court will be considering and addressing for the first time. Further, both of these legal questions will involve extensive review and analysis of decades-old legislative history.

If the action proceeds, it will also likely involve a substantial amount of documentary evidence and a large number of witnesses. The case potentially affects thousands of UC Regents employees. Further, while the UC Regents' plan was administered by Blue Shield, Plaintiff alleges that Blue Shield contracted with a third party for collections. (Compl. ¶ 16.) With respect to Plaintiff alone, he alleges that this third party “sent multiple demands for reimbursement” and communicated with his attorney multiple times. (*Id.*) As a result, there may be thousands of pages of similar documents and communications regarding other putative class members.

Finally, the relief that Plaintiff seeks on behalf of the putative class would, if ordered, involve substantial postjudgment judicial supervision. Plaintiff seeks restitution and preliminary and permanent injunctive relief regarding UC Regents' collection efforts going forward. That relief would implicate the actions of UC Regents, Blue Shield, and the third party, Rawlings.



1     **III.     CONCLUSION**

2             For these reasons, Blue Shield respectfully requests that the Court approve this  
3     Application for Approval of Complex Litigation Designation and issue an order assigning this  
4     case to the Complex Litigation Department.

5  
6     Dated:   May 10, 2018

MANATT, PHELPS & PHILLIPS, LLP

7  
8     By: \_\_\_\_\_



Joseph E. Laska  
Attorneys for Defendant  
BLUE SHIELD OF CALIFORNIA

**PROOF OF SERVICE**

I, Elaine T. Maestro, declare as follows:

I am employed in San Francisco County, San Francisco, California. I am over the age of eighteen years and not a party to this action. My business address is MANATT, PHELPS & PHILLIPS, LLP, One Embarcadero Center, 30th Floor, San Francisco, California 94111. On May 15, 2018, I served the within:

**DEFENDANT BLUE SHIELD OF CALIFORNIA'S UNOPPOSED  
APPLICATION FOR APPROVAL OF COMPLEX DESIGNATION**

on the interested parties in this action addressed as follows:

Michael Padilla, Esq.  
Jeffrey Padilla, Esq.  
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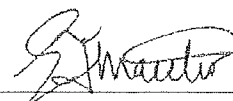
Thomas D. Haklar, Esq.  
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*Attorneys for Plaintiff*

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Patricia L. Bonheyo, Esq.  
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San Francisco, CA 94104  
*Attorneys for Defendant*  
Regents of the University of California



**(BY MAIL)** By placing such document(s) in a sealed envelope, with postage thereon fully prepaid for first class mail, for collection and mailing at Manatt, Phelps & Phillips, LLP, San Francisco, California following ordinary business practice. I am readily familiar with the practice at Manatt, Phelps & Phillips, LLP for collection and processing of correspondence for mailing with the United States Postal Service, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal Service the same day as it is placed for collection.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on May 15, 2018, at San Francisco, California.

  
Elaine T. Maestro

**SUPERIOR COURT OF CALIFORNIA**

**COUNTY OF SAN FRANCISCO**

400 MCALLISTER STREET, SAN FRANCISCO, CA 94102-4514

DAVID LIEBERMAN

**Department 304**

PLAINTIFF (S)

VS.

**NO. CGC-18-564930**

REGENTS OF THE UNIVERSITY OF  
CALIFORNIA et al

DEFENDANT (S)

**Order Granting Complex  
Designation and for Single  
Assignment**

TO: ALL COUNSEL AND PARTIES IN PROPRIA PERSONA

The Application for Approval of Complex Designation filed May-15-2018, in the above-entitled action, is GRANTED. Complex Designation is APPROVED and it is hereby ordered that this entire action be assigned for all purposes to the Complex Litigation Department, Judge CURTIS E.A. KARNOW, Department 304, of the California Superior Court for the County of San Francisco at 400 McAllister Street, San Francisco, CA 94102.

The CASE MANAGEMENT CONFERENCE previously set for Aug-15-2018 in Dept.610 is canceled and a new case management conference is set for Jul-9-2018 at 9:00 am in Department 304. Counsel is expected to appear in person for this initial case management conference. A JOINT case management statement must be filed and an endorsed copy thereof delivered to Department 304 no later than four (4) court days prior to the case management conference.

Any pending motions previously set for hearing in the Law and Motion or Discovery Departments should be taken off calendar and new courtesy copies forwarded to Department 304 for possible re-setting at the time of the case management conference. All court dates must be reserved in advance with the Clerk of the Court. The Clerk of the Court in Department 304 may be contacted at (415) 551-3729.

Counsel for plaintiff shall provide a copy of this order and notice to all counsel of record and/or parties In Propria Persona that are not listed in the attached certificate of service.

All counsel should read and be familiar with the "User's Manual for Dept.304" located online at: <http://www.sfsuperiorcourt.org/divisions/civil/litigation>

This case is now subject to mandatory e-filing and e-service pursuant to Local Rule 2.10. For e-filing registration, training information and service list assistance, contact the Court's approved e-filing & e-service provider at (888)529-7587.

DATED: MAY-30-2018

Curtis Karnow

JUDGE

I, the undersigned, certify that I am an employee of the Superior Court of California, County of San Francisco and not a party to the above-entitled cause and that on MAY-30-2018 I served the attached Order Granting Complex Designation and for Single Assignment by placing a copy thereof in an envelope addressed to all parties to this action as listed below. I then placed the envelope in the outgoing mail at 400 McAllister Street, San Francisco, CA 94102, on the date indicated above for collection, sealing of the envelope, attachment of required prepaid postage, and mailing on that date, following standard court practice.

Dated : MAY-30-2018

By: DANIAL LEMIRE

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SAN FRANCISCO, CA 94111-3719

## **EXHIBIT D**

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF SAN FRANCISCO – CIVIL CENTER COURTHOUSE**

DAVID LIEBERMAN, INDIVIDUALLY AND  
ON BEHALF OF ALL OTHERS SIMILARLY  
SITUATED,

Plaintiffs,

vs.

REGENTS OF THE UNIVERSITY OF  
CALIFORNIA; BLUE SHIELD OF  
CALIFORNIA, AND DOES 1 TO 50,  
INCLUSIVE

Defendants.

Case No. CGC-18-564930  
Action Filed: March 12, 2018  
Judge: Hon. Teri L. Jackson  
Dept: 610

**FIRST AMENDED CLASS ACTION  
COMPLAINT**

**VERIFIED COMPLAINT FOR:**

- 1. Declaratory Relief**
- 2. Preliminary and Permanent  
Injunctive Relief**
- 3. Unjust Enrichment/Restitution**
- 4. Violation of Business and  
Professions Code §17200, et seq.  
(Unlawful and Unfair)**

ELECTRONICALLY  
**FILED**

*Superior Court of California,  
County of San Francisco*

**05/04/2018**

**Clerk of the Court**

BY: DAVID YUEN

Deputy Clerk

1 Plaintiff DAVID LIEBERMAN by and through his undersigned counsel, alleges,  
2 based on personal knowledge as to himself and his own acts and, as to other matters,  
3 based on information and belief, as follows:  
4

#### 5 INTRODUCTION

6 1. At all times mentioned, plaintiff David Lieberman has been employed by the  
7 defendant Regents of the University of California (hereinafter "REGENTS") as a  
8 professor at UC Berkeley Law School. Employees of the REGENTS are entitled to  
9 health care coverage as a group benefit of their employment. This coverage is a self-  
10 funded plan paid through monthly contributions by employees and the Regents and  
11 plaintiff was enrolled in this health plan in 2016. Defendant REGENTS is a public trust  
12 operated as a public corporation of the State of California and is considered to be a  
13 Branch of the State, a State governmental agency and a public entity. As such, the  
14 REGENTS group health plan is not subject to ERISA.  
15  
16

17 2. On May 2, 2016, plaintiff was involved in a serious motor vehicle accident  
18 and suffered severe injuries, requiring hospitalization and extensive treatment. At the  
19 time of the accident, plaintiff was covered under the REGENTS health plan, and said  
20 health plan paid for plaintiff's medical expenses in excess of \$500,000.  
21

22 3. At the time of the above accident, the tortfeasor who caused the accident  
23 injuring plaintiff had only \$15,000 of liability coverage. However, plaintiff had \$500,000  
24 of uninsured and underinsured ("UM/UIM") coverage which provides for an additional  
25 \$485,000 of coverage to plaintiff. Consequently, plaintiff had available to him \$485,000  
26 of UIM available to him as primary and/or excess coverage for his injuries incurred in  
27 this accident. This UIM coverage was purchased by plaintiff for the purpose of  
28



1 protecting his family and himself from any perils caused by uninsured or underinsured  
2 drivers.

3         4. The REGENTS group health plan at the time of plaintiff's accident provided  
4 for reimbursement rights purporting to allow REGENTS to recover medical expenses its  
5 health plan had paid from any "Recovery" made by an injured employee. "Recovery" is  
6 defined in the plan to include any amount received from the employee's UM/UIM  
7 coverage. The REGENTS health plan's reimbursement provision appears at pages 42-  
8 43 of the plan's Benefit Booklet, which pages are attached hereto as Exhibit 1. Said  
9 provision purports to create a lien or security interest in the "full amount of Benefits paid  
10 by the plan" and also purports to waive all equitable defenses to reimbursement such as  
11 the "make whole" doctrine and the "common fund" doctrine.  
12

13  
14         5. In 1972, the California State Legislature modified the UM/UIM statute,  
15 Insurance Code §11580.2 and included a new subsection under §11580.2(c)(4),  
16 providing that, "The insurance coverage provided for in this section does not apply  
17 either as primary or as excess coverage" (4) "In any instance where it would inure  
18 directly or indirectly to the benefit of any workers' compensation carrier or to any or to  
19 any person qualified as a self-insurer under any workers' compensation law, **or directly**  
20 **to the benefit of the United States, or any state or any political subdivision**  
21 **thereof.**" (emphasis supplied)  
22

23  
24         6. DEFENDANTS have willfully violated this law by claiming a lien and security  
25 interest against the entire amount of plaintiff's UIM coverage, intended as his primary  
26 and/or excess coverage for his own protection. DEFENDANTS have thereby claimed  
27 and seized the right to the entirety of plaintiff's UIM coverage for its own direct benefit in  
28

1 violation of §11580.2(c)(4). Because the REGENTS plan is self-funded, said defendant  
2 owns any such reimbursement rights and can use such recoveries for any purpose  
3 without any limitations or oversight. Said claim of lien and security interest by an  
4 agency of the State is therefore prohibited by the above Insurance Code section.  
5

6 7. The State of California enacted the UM/UIM requirement in Insurance Code  
7 §11580.2 for the express protection of insured motorists and their families being injured  
8 by uninsured or underinsured motorists. The UM/UIM requirement was not intended to  
9 benefit the State, the United States, counties, employers, hospitals or health care plans.  
10 There is ample State legislation limiting such entities from claiming UM/UIM benefits,  
11 such as: Insurance Code §11580.2(c)(4), Insurance Code §§10270.98 and 106 (group  
12 health plans cannot reduce benefits based on individual coverage), Government Code  
13 §§22946-22947 (reimbursement claims limited to claims against third parties—defined  
14 as tortfeasors. (It is unknown at this early stage whether defendant REGENTS opted  
15 into PEMHCA pursuant to Government Code §22755)), Hospital Lien Act, Civil Code  
16 §§3045.1-3045.6 (hospital liens not available against UM/UIM recoveries), Government  
17 Code §23004.1 (county liens enforceable only against judgments and not settlements).  
18 Consequently, DEFENDANTS' direct lien claim against the entirety of plaintiff's UIM  
19 coverage violates the clear legislative intent of the State to protect UM/UIM claims from  
20 such direct claims.  
21  
22  
23

24 8. This is a Class Action pursuant to Code of Civil Procedure 382 by Plaintiff on  
25 behalf of himself and other individuals employed by defendant REGENTS who were  
26 subjected to claims by the DEFENDANTS for reimbursement of proceeds under  
27 employees' UM/UIM coverage.  
28

9. DEFENDANTS' seizure of plaintiff's right to his individual UIM coverage benefits through the unilateral assertion of a lien claim in its plan document constitutes a seizure of private property by the State without any due process of law. There is no provision in DEFENDANTS' plan for any hearing or other judicial oversight before such seizure is effected through assertion of the lien claim. DEFENDANTS' reimbursement provision (Exhibit 1) also purports to provide that there is a "waiver of any defense to full reimbursement of the Plan from the recovery." Said seizure also constitutes a violation of equal protection of the laws of the State in that similarly situated persons are treated substantially differently depending on which State laws apply, as noted above.

10. Plaintiff seeks, on behalf of himself and the Class, a declaration that defendants' practice of claiming UM/UIM benefits from its employees is unlawful and seeks a permanent injunction enjoining DEFENDANTS from continuing their unlawful practice of willfully violating the Insurance Code provisions intended to safeguard Plaintiffs' UM/UIM coverage, restitution, and costs and attorneys' fees.

## PARTIES

11. Plaintiff DAVID LIEBERMAN is a citizen of California and resides in Berkeley, California. He is employed by Defendant REGENTS as a professor at UC Berkeley Law School.

12. At all times relevant herein, Defendant REGENTS was a public trust operated as a public corporation of the State of California and is considered to be a Branch of the State, a State governmental agency and a public entity, that operates in San Francisco and throughout the State of California.

1           13. Defendant BLUE SHIELD of CALIFORNIA ("BLUE SHIELD") is a  
2 corporation duly organized and existing under the laws of the State of California, with its  
3 principal place of business located in San Francisco, California. It is licensed to conduct  
4 business as a healthcare service plan, health/disability insurer and is in the business of  
5 providing health plans to consumers throughout this State. BLUE SHIELD contracts  
6 with Regents to provide claims administration and provider network services to  
7 defendant REGENTS' health plan for its employees. Plaintiff is informed and believes  
8 and thereon alleges that, pursuant to that contract, BLUE SHIELD administers claims,  
9 provides network, subrogation and reimbursement services and exercises discretion in  
10 performing all such duties.  
11

12           14. The true names and capacities, whether individual, corporate, associate or  
13 otherwise, of DEFENDANTS sued herein as DOES 1 through 50 are currently unknown  
14 to Plaintiffs who, therefore, sue these defendants by such fictitious names under Code  
15 or Civil Procedure §474. Plaintiffs allege, upon information and belief, that each of the  
16 DOE defendants is legally responsible in some manner for the unlawful acts referred to  
17 herein. Plaintiff will seek leave of court to amend this complaint to reflect the true  
18 names and capacities of the DEFENDANT designated hereinafter as DOES when such  
19 identities become known  
20  
21

22           15. Plaintiff is informed and believes and, based thereon, alleges each  
23 Defendant acted in all respects pertinent to this action as the agent of the other  
24 DEFENDANTS, carried out a joint scheme, business plan or policy in all respects  
25 pertinent hereto, and the acts of each DEFENDANT are legally attributable to the other  
26 DEFENDANTS.  
27  
28

**FACTUAL BACKGROUND**

16. Plaintiff is informed and believes and thereon alleges that as of the date of this complaint, DEFENDANTS have made reimbursement demands from Plaintiffs' UM/UIM coverage throughout the State of California.

17. Defendant BLUE SHIELD contracts with a Kentucky collection agency, Rawlings and Company, to pursue subrogation and reimbursement from employees of defendant REGENTS from said employees' personal injury claims, including claims from employees' own UM/UIM recoveries.

18. Acting as agent for the DEFENDANT and each of them, Rawlings has sent multiple demands for reimbursement from any recovery that plaintiff Lieberman should make from his own UM/UIM coverage. Plaintiff Lieberman's personal injury attorney advised Rawlings in writing that any such claim was unlawful under the above Insurance Code, that he was aware that REGENTS was doing the same thing to other employees and that Plaintiff was firm in his position that the practice was unlawful. In response, Rawlings attorney, acting as agent for the DEFENDANTS herein, responded with a letter dated October 16, 2017, rejecting plaintiff's position and insisting on a right to plaintiff's UM/UIM coverage under Insurance Code §11580.2. Since that date, Rawlings has continued to pursue reimbursement from plaintiff Lieberman's UM/UIM policy, through multiple e-mails, letters and telephone calls, all in violation of the Insurance Code section cited above.

19. REGENTS' web site indicates that it has in excess of 185,000 employees. Plaintiff is informed and believes and thereon alleges that DEFENDANTS are pursuing this unlawful practice of demanding recovery from their own employees' UM/UIM

1 recoveries throughout the State and it is believed that hundreds or thousands of such  
2 claims have been pursued by defendants within the four years prior to the filing of this  
3 complaint.  
4

5 **CLASS ALLEGATIONS**

6 20. Plaintiff brings this class action pursuant to California Code of Civil  
7 Procedure §382. Plaintiff seeks to certify a Class composed of all persons who  
8 obtained requests for reimbursements from their UM/UIM awards from DEFENDANTS,  
9 and fall within Subclass A or B as follows:  
10

11  
12 **SUBCLASS A**

13 **All present and previous employees of REGENTS who are**  
14 **currently facing DEFENDANTS' claims for reimbursement**  
15 **from their own UM/UIM claims but have not paid**  
16 **defendants from said coverage, and REGENTS employees**  
17 **who face such claims in the future.**  
18  
19

20 **SUBCLASS B**

21 **All REGENTS employees who have paid reimbursement**  
22 **Claims to DEFENDANTS or their agents from their**  
23 **UM/UIM coverage since March 1, 2014.**  
24  
25  
26  
27  
28

**NUMEROSITY**

21. The Class is so numerous that joinder of all individual members in one action would be impracticable. The disposition of the individual claims of the respective class members through this class action will benefit the parties in this Court.

22. Plaintiff is informed and believes, and thereon alleges, that there are, at a minimum, hundreds or thousands of such Class members.

23. The exact size of the Class and the identities of the individual members thereof are ascertainable through DEFENDANTS' records including, but not limited to, Defendants' transactions and through DEFENDANTS' agents acting on their behalf.

**TYPICALITY**

24. Plaintiff's claims are typical of the Class. The claims of the Plaintiff and the Class are based on the same legal theories and rise from the same unlawful conduct.

25. Plaintiff and the Class members all had their health coverage through their employment with defendant REGENTS, with each receiving demands for reimbursement for UM/UIM recoveries from Defendants. Therefore, DEFENDANTS were in violation of Insurance Code 11580.2(c)(4).

**COMMON QUESTIONS OF FACT AND LAW**

26. There is a well-defined community of interest and common questions of fact and law affecting members of the Class.

27. The questions of fact and law common to the Class predominate over questions which may affect individual members and include the following:



1 a. Whether DEFENDANTS' conduct of seeking and receiving  
 2 reimbursement from Plaintiff and Class members violated Insurance Code  
 3 §11580.2(c)(4);

4 b. Whether DEFENDANTS' conduct was willful;

5 c. Whether Plaintiff and Class members are entitled to restitution,  
 6 costs and/or attorneys' fees for DEFENDANTS' acts and conduct; and  
 7

8 d. Whether Plaintiff and Class members are entitled to a permanent  
 9 injunction enjoining DEFENDANTS from continuing to engage in its unlawful conduct.  
 10

11 e. Whether the Defendants' plan provision allowing a lien seizure of  
 12 employees' UIM coverage without the benefit of any hearing or judicial oversight is a  
 13 violation of due process and equal protection of the law.  
 14

#### 15 ADEQUACY OF REPRESENTATION

16 28. Plaintiff is an adequate representative of the Class because his interests  
 17 do not conflict with the interests of the Class. Plaintiff will fairly, adequately and  
 18 vigorously represent and protect the interests of Class members and have no interests  
 19 antagonistic to Class members. Plaintiff has retained counsel who are competent and  
 20 experienced in the prosecution of class action litigation.  
 21

#### 22 SUPERIORITY

23 29. A class action is superior to other available means for the fair and efficient  
 24 adjudication of the Class' claims. The restitution to each Class member is easily  
 25 ascertainable from DEFENDANTS own records. Plaintiff does not know of any other  
 26 litigation concerning the controversy already commenced by or against any Class  
 27 member. The likelihood of the individual Class members prosecuting separate claims is  
 28

remote. Individualized litigation would also present the potential for varying, inconsistent or contradictory judgment, and would increase the delay and expense to all parties and the court system resulting from multiple trials of the same factual issues. In contrast, the conduct of this matter as a class action presents fewer management difficulties, conserves the resources of the parties and the court system, and would protect the rights of members of the Class. Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action.

### **FIRST CAUSE OF ACTION**

#### **Complaint for Declaratory Relief**

#### **(Against All DEFENDANTS and DOES 1-50)**

30. Plaintiff and the Class incorporate by reference each of the preceding paragraphs as though fully set forth herein.

31. A Declaratory Judgment is necessary in that Plaintiff contends, and DEFENDANTS deny, the following:

The UC REGENTS and BLUE SHIELD's lien claim of reimbursement Rights to Plaintiff's UM/UIM proceeds is an unlawful act under Insurance Code 11580.2(c)(4) and said defendants' reimbursement provision in their health plan purporting to allow defendants to lay claim to employees' UM/UIM coverage is unlawful. (See attached Exhibit 1)

32. The DEFENDANTS have willfully violated Insurance Code 11580.2(c)(4) in conscious disregard of the rights of Plaintiff and Class members through demanding and/or obtaining reimbursement of UM/UIM awards in violation of the law.

33. DEFENDANTS' seizure of plaintiff's right to his individual UIM coverage benefits through the unilateral assertion of a lien claim in its plan document constitutes a seizure of private property by the State without any due process of law. There is no provision in DEFENDANTS' plan for any hearing or other judicial oversight before such seizure is effected through assertion of the lien claim. DEFENDANTS' reimbursement provision (Exhibit 1) also purports to provide that there is a "waiver of any defense to full reimbursement of the Plan from the recovery." Said seizure also constitutes a violation of equal protection of the laws of the State in that similarly situated persons are treated substantially differently depending on which State laws apply, as noted above.

## **SECOND CAUSE OF ACTION**

### **Complaint for Preliminary and Permanent Injunctive Relief**

#### **(Against All DEFENDANTS and DOES 1-50)**

34. Plaintiff and the Class incorporate by reference each of the preceding paragraphs as though fully set forth herein.

35. An actual controversy has arisen and now exists between the parties relating to the REGENTS' claimed entitlement to reimbursement for medical expenses paid under a group health plan from Plaintiff's policy proceeds.

36. A preliminary and permanent injunction enjoining DEFENDANTS from asserting any right to restitution or reimbursement from uninsured or underinsured motorist insurance coverage under any group health plan issued by defendants is necessary to protect Plaintiffs in said group health plan(s).

1           37. DEFENDANTS' actions were and continue to be willful. Defendants'  
2 conduct is continuing and unless restrained, DEFENDANTS will continue to engage in  
3 its unlawful conduct.

4           38. DEFENDANTS' wrongful conduct, unless and until enjoined and restrained  
5 by order of this court, will cause great and irreparable harm to Plaintiff and the Class  
6 because the mentioned violation by defendants will continue unabated.

7  
8                                   **THIRD CAUSE OF ACTION**

9                                   **Unjust Enrichment/Restitution**

10                                   **(Against ALL DEFENDANTS and DOES 1-50)**

11  
12           39. Plaintiff incorporates by reference each of the preceding paragraphs as  
13 though fully set forth herein.

14           40. DEFENDANTS have been unjustly enriched as a result of the conduct  
15 described in this Complaint and other inequitable conduct.

16  
17           41. Plaintiff alleges that DEFENDANTS' have pursued an unlawful practice of  
18 demanding recovery from their own employees' UM/UIM recoveries in violation of  
19 Insurance Code §11580.2(c)(4).

20           42. DEFENDANTS have been unjustly enriched by their unlawful retention of  
21 part of Plaintiffs' UM/UIM recoveries and it would be inequitable and unjust for  
22 DEFENDANTS to continue to retain those amounts.

23  
24           43. Accordingly, Plaintiffs seek a return of all benefits that have been conferred  
25 on DEFENDANTS and by which they have been unjustly enriched in an amount to be  
26 proven at trial.

**FOURTH CAUSE OF ACTION**

**Violations of Business and Professions Code Section 17200, *et seq.***

**Unlawful and Unfair Business Acts and Practice**

**(Against Blue Shield and DOES 1-50 ONLY)**

44. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth herein.

45. Plaintiff asserts this Cause of Action individually and on behalf of all members of the Class against Defendant BLUE SHIELD and Does 1-50 for unlawful and unfair business practices, as defined by California Business and Professions Code §17200, *et seq.*

46. Plaintiff is informed and believes and thereon alleges that said DEFENDANTS' conduct violates California Business and Professions Code §17200, *et seq.* The acts and practices of DEFENDANTS constitute a common continuing course of conduct of unfair competition by means of unlawful and unfair business acts or practices within the meaning of §17200.

47. Pursuant to Business and Professions Code section 17203, Plaintiff and members of the Class seek from defendants, and each of them, restitution and disgorgement of all recoveries from REGENTS' employees UM/UIM coverage obtained through the Unlawful and Unfair Business Practices set forth in this Complaint and other ill-gotten gains obtained by DEFENDANTS as a result of DEFENDANTS' conduct in violation of Business and Professions Code section 17200 obtained through the Unlawful and Unfair Business Practices set forth in this Complaint and other ill-gotten

1 gains obtained by DEFENDANTS as a result of DEFENDANTS' conduct in violation of  
2 Business and Professions Code section 17200.

3 48. Pursuant to Business and Professions Code section 17204, Plaintiff and  
4 members of the Class seek an order of this Court enjoining DEFENDANTS, and each of  
5 them, from continuing to engage in the acts set forth in this Complaint, which acts  
6 constitute violations of Business and Professions Code section 17200, *et seq.* Plaintiff  
7 and the Class will be irreparably harmed if such an order is not granted.  
8

9 49. Said employee benefit plans provided by Defendant BLUE SHIELD contain  
10 unlawful provisions purporting to allow BLUE SHIELD to seek reimbursement from  
11 Plaintiffs' UM/UIM coverage from the health plans which violate California Business and  
12 professions Code section 17200 *et seq.* and Insurance Code section 11580.2(c)(4).  
13 Said plans also operate as lien seizures by the State of employees' private property  
14 without any hearing or judicial oversight and therefore violate due process and equal  
15 protection of the law.  
16  
17

18 50. Participants and beneficiaries of said employee benefit plans who have  
19 paid any UM/UIM benefits to BLUE SHIELD in the past are entitled to restitution to  
20 recover those amounts collected in violation of California insurance law, and to prevent  
21 the unjust and illegal enrichment of BLUE SHIELD and/or its agents.  
22

23 51. Participants and beneficiaries of said employee benefits plans who have  
24 not paid any UM/UIM benefits to BLUE SHIELD but are subject to present or future  
25 claims against their UM/UIM benefits by BLUE SHIELD are entitled to a  
26 declaration/clarification of their right to present, or future benefits, without any such  
27 claims being asserted against their UM/UIM benefits.  
28

1           52. Plaintiff also seeks an order awarding attorneys' fees and costs pursuant  
2 to Code of Civil Procedure section 1021.5.

3           53. Plaintiff and the Class have suffered substantial injury in the form of  
4 actionable losses of money as a direct and proximate result of DEFENDANTS' unlawful  
5 and unfair business practices.  
6

7                                   **PRAYER FOR RELIEF**

8           Plaintiff, on his own behalf and on behalf of the Class, pray for relief as follows,  
9 as applicable to the causes of action set forth above:  
10

11           1. For a Judicial Declaration that ALL DEFENDANTS have violated Insurance  
12 Code section 11580.2(c)(4), by demanding and laying claim to UM/UIM proceeds by the  
13 Plaintiff and the proposed Class.

14           2.. For a judicial declaration that the lien seizure of plaintiffs' UIM coverage  
15 benefits by a State agency without any hearing or judicial oversight constitutes a denial  
16 of due process requiring the provision allowing such seizure to be stricken. For a  
17 further declaration that the same provision violates equal protection of the laws to  
18 persons similarly situated.  
19

20           3. For Preliminary and Permanent Injunctive Relief, enjoining ALL  
21 DEFENDANTS from continuing to assert any claims for reimbursement from the  
22 UM/UIM claims of the REGENTS employees.  
23

24           4. For an Order certifying the proposed Class pursuant to Code of Civil  
25 Procedure section 382 and Civil Code section 1780, *et seq.* against ALL DEFENDANTS  
26 and appointing Plaintiff to represent the proposed Class and designating their attorneys  
27 as Class Counsel.  
28



1           5. Under Business and Professions Code section 17203, Plaintiff, and the  
2 general public, seek an Order of this Court ordering BLUE SHIELD and DOES 1  
3 through 50 to immediately cease all acts of unfair competition and to enjoin said  
4 DEFENDANTS from continuing to conduct business via unlawful and/or unfair business  
5 acts or practices as particularized herein.  
6

7           6. For Class Plaintiffs who have REGENTS health coverage and who have  
8 paid reimbursement from their UM/UIM recoveries to DEFENDANTS or their agents, an  
9 Order of restitution in the amount of the UM/UIM benefits paid.  
10

11           7. For Class Plaintiffs who have REGENTS health coverage pursuant to the  
12 REGENTS employee benefit plan, and who are being subjected to a reimbursement  
13 claim by DEFENDANTS from their UM/UIM recoveries, a declaration and clarification of  
14 their right to be free of such claims.  
15

16           8. For a preliminary and permanent injunction enjoining ALL DEFEDANTS  
17 from asserting any right to restitution or reimbursement from UM/UIM coverage under  
18 any disability or group health plan issued by REGENTS.  
19

20           9. For an Order requiring DEFENDANTS, and DOES 1 through 50, to give  
21 notice of this action, to participants in a REGENTS health plan, who within four years of  
22 the filing of the Complaint, had uninsured or underinsured motorist insurance policy  
23 proceeds paid over to DEFENDANTS or their agents.  
24

25           10. For an Order requiring DEFENDANTS and DOES 1 through 50, to identify  
26 all health plan members who, within four years of the filing of this Complaint, paid over  
27 uninsured and underinsured motorist policy benefits to defendants or their agents.  
28

1           11. For an Order directing REGENTS and BLUE SHIELD to notify all "Class  
2 Members" who are presently subject to its collection efforts against said members'  
3 UM/UIM coverage of this action and notifying said members of its withdrawal of any and  
4 all claims for reimbursement from such coverage.  
5

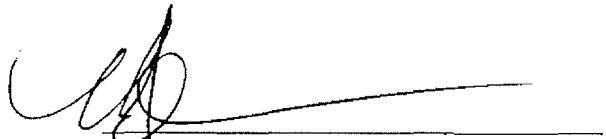
6           12. For an Order awarding Plaintiff and the Class restitution of all uninsured  
7 and underinsured policy benefits recovered from REGENTS group health plan  
8 participants and such other relief as the Court deems proper.  
9

10           13. For an Order declaring the rights and obligations of Plaintiff and Class  
11 Members, on the one hand, and BLUE SHIELD, on the other, with regard to the  
12 business practices alleged.

13           14. For an Order awarding Plaintiffs' attorneys' fees, costs and expenses as  
14 authorized by applicable law; and  
15

16           15. For such other and further relief as this Court may deem just and proper.  
17

18           Dated: May 3, 2018

19   
20 **O'MARA & PADILLA**  
21 By: MICHAEL D. PADILLA  
22 Law Offices of Donald M. De Camara  
23 Law Offices of Thomas D. Haklar  
24 Attorneys for Plaintiff  
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**VERIFICATION OF FIRST AMENDED COMPLAINT**

I, David Lieberman, declare as follows:

1. I am the Plaintiff in the above-entitled action. I am a citizen and resident of the State of California.
2. I have personal knowledge of the facts alleged by me in the foregoing First Amended Complaint, and if called upon to testify I could competently testify to those facts, except as to those matters set forth on information and belief, and as to those matters, I am informed and believe them to be true.
3. I declare and verify under penalty of perjury under the laws of the State of California that I have read the foregoing First Amended Complaint and the factual allegations therein are true and correct.

Executed on May 3, 2018

  
\_\_\_\_\_  
DAVID LIEBERMAN

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

David Lieberman

(b) County of Residence of First Listed PlaintiffAlameda County  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)  
Michael Padilla (SBN 67060)  
O'Mara & Padilla, 320 Encinitas Blvd., Suite A  
Encinitas, CA 92024 (858) 481-5454

DEFENDANTS

Blue Shield of Cal.; Regents of the Univ. of Cal.

County of Residence of First Listed DefendantSan Francisco County  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)  
Joseph E. Laska (SBN 221055)  
Manatt Phelps & Phillips, LLP, One Embarcadero Center, 30th Floor  
San Francisco, CA 94111 (415) 291-7400

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

☐ 1 U.S. Government Plaintiff

☒ 3 Federal Question  
(U.S. Government Not a Party)

☐ 2 U.S. Government Defendant

☐ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	625 Drug Related Seizure of Property 21 USC § 881	422 Appeal 28 USC § 158	375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	690 Other	423 Withdrawal 28 USC § 157	376 Qui Tam (31 USC § 3729(a))
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<b>LABOR</b>	<b>PROPERTY RIGHTS</b>	400 State Reapportionment
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	710 Fair Labor Standards Act	820 Copyrights	410 Antitrust
<input type="checkbox"/> 150 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 330 Federal Employers' Liability	720 Labor/Management Relations	830 Patent	430 Banks and Banking
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	740 Railway Labor Act	835 Patent—Abbreviated New Drug Application	450 Commerce
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 345 Marine Product Liability	751 Family and Medical Leave Act	840 Trademark	460 Deportation
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	790 Other Labor Litigation	<b>SOCIAL SECURITY</b>	470 Racketeer Influenced & Corrupt Organizations
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	791 Employee Retirement Income Security Act	861 HIA (1395ff)	480 Consumer Credit
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<b>IMMIGRATION</b>	862 Black Lung (923)	490 Cable/Sat TV
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury -Medical Malpractice	462 Naturalization Application	863 DIWC/DIWW (405(g))	850 Securities/Commodities/Exchange
<input type="checkbox"/> 196 Franchise	<b>CIVIL RIGHTS</b>	465 Other Immigration Actions	864 SSID Title XVI	890 Other Statutory Actions
<b>REAL PROPERTY</b>	<b>PRISONER PETITIONS</b>		865 RSI (405(g))	891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<b>HABEAS CORPUS</b>		<b>FEDERAL TAX SUITS</b>	893 Environmental Matters
<input type="checkbox"/> 220 Foreclosure	440 Other Civil Rights		870 Taxes (U.S. Plaintiff or Defendant)	895 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	441 Voting		871 IRS—Third Party 26 USC § 7609	896 Arbitration
<input type="checkbox"/> 240 Torts to Land	442 Employment			899 Administrative Procedure Act/Review or Appeal of Agency Decision
<input type="checkbox"/> 245 Tort Product Liability	443 Housing/Accommodations			950 Constitutionality of State Statutes
<input type="checkbox"/> 290 All Other Real Property	445 Amer. w/Disabilities—Employment			
	446 Amer. w/Disabilities—Other	<b>OTHER</b>		
	448 Education	540 Mandamus & Other		
		550 Civil Rights		
		555 Prison Condition		
		560 Civil Detainee—Conditions of Confinement		

V. ORIGIN (Place an "X" in One Box Only)

☐ 1 Original Proceeding

☒ 2 Removed from State Court

☐ 3 Remanded from Appellate Court

☐ 4 Reinstated or Reopened

☐ 5 Transferred from Another District (specify)

☐ 6 Multidistrict Litigation—Transfer

☐ 8 Multidistrict Litigation—Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
Fifth and Fourteenth Amendments of the United States Constitution

Brief description of cause:  
Plaintiff alleges that his UC Regents' health plan contains a provision that violates the U.S. Constitution and Ins. Code 11580.2.

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P.

DEMAND \$

CHECK YES only if demanded in complaint:  
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only)

☒ SAN FRANCISCO/OAKLAND

☐ SAN JOSE

☐ EUREKA-MCKINLEYVILLE

DATE

06/01/2018

SIGNATURE OF ATTORNEY OF RECORD

/s/ Joseph Laska

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

**Authority For Civil Cover Sheet.** The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
  - c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
  - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
  - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
  - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
  - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
  - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [UC Berkeley Professor Claims Employer Unlawfully Demanded Reimbursement of Insurance Recovery](#)

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